

50/100

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**GUWAHATI BENCH**  
**GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./T.A No. 315/2005

R.A/C.P No.

E.P/M.A No. 13/08

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SECTION OFFICER (Judl.)

FORM NO. @  
(See Rule 42)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 315/05

Misc. Petition No. \_\_\_\_\_

Contempt Petition No. \_\_\_\_\_

Review Application No. \_\_\_\_\_

Applicant(s) \_\_\_\_\_

Respondent(s) \_\_\_\_\_

Advocate for the Applicants Mufakhaher Ali  
U. O. I & Ors

Advocate for the Respondent(s) \_\_\_\_\_

CGSC

Plt. St. Counsel

Notes of the Registry Date \_\_\_\_\_ Order of the Tribunal  
22.12.2005 Present : Hon'ble Mr. Justice G.  
Sivarajan, Vice-Chairman.

1. Application is a form  
is filed/ P. P. P. P. P. P.  
deposited vide P. P. P.  
No. 266.31.72.45  
Dated 19.12.05

[Signature]  
Dy. Registrar

NT 20/12/05

Steps not taken

fl. comply order dated  
22.12.05  
NS  
22.12.05

Notice & order sent  
to D/section for  
issuing to resp.  
Nos. 1 to 13 by regd.  
A/D post.  
4/1/06  
D/No = 37 to 47  
DT 9/1/06

lm

Heard Mr. U.K. Nair, learned  
counsel for the applicant and Mr. G.  
Baishya, learned Sr. Central Govern-  
ment standing counsel for the respon-  
dents.

Admit. Issue notice to the  
respondents.  
Post on 8.2.2005. Written  
statement, if any, in the meantime.

[Signature]  
Vice-Chairman

- Notices duly served on Respon-  
dents No. 1, 2, 4, 5 & 6. The Service  
Report of Respondents No. 7 to 13  
are awaited.

Post the matter on 1.3.06.

[Signature]  
Vice-Chairman

Contd.....

Notice duly

Served on 01.03.06.

resp. Nos. 1, 2, 5, 6, 4

Mr. B. Sarma, learned counsel for the applicant is directed to correct the name and address of the private Respondents. The counsel for the other respondents has requested further time to file written statement.

post the matter on 3.4.06.

Vice-Chairman

① Notice duly served on R. No. 1, 2, 4, 5 & 6

② Respondent No. 7 to 13 are admitted

③ No written statement has been filed

28-2-06

① No written statement has been filed.

No acknowledgement about the serving of notices on R. no. 7 to 13 (priv. Resps.) though sent by hand as reported from Despatch Sec.

Issue copy of the order dated 01.3.06 to the applicant.

3/3/06

order dt- 01/03/06, sent to D/section for issuing to learned advocate for the applicant.

3/3/06 D/No-274 dt-6/3/06

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QA-315/2005

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Notes of the Registry	Date	Order of the Tribunal
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4.4.06

The counsel for the respondents has submitted that they would like to have file written statement. Let it be done. Post the matter on 3.5.06.

Vice-Chairman

lm  
3.5.2006

Mrs. M. Das, learned Govt. Advocate, State of Assam appearing on behalf of respondents 2, 5 & 6 submits that she requires further time to file reply statement. Let it be done.

post on 17.5.2006.

Vice-Chairman

bb

17.5.06

Counsel for the applicant wants to file rejoinder. Let it be done. post on 12.6.2006.

Vice-Chairman

bb

12.06.2006

Mr. B. Sarma, learned counsel for the applicant wanted to file rejoinder to the reply statement filed by the respondents. Respondent No. 1 has also filed reply statement. Let it be brought on record, if otherwise in ~~other~~ order.

Post on 04.07.2006.

Vice-Chairman

mb

04.07.2006

Learned counsel for the applicant wanted time to file rejoinder.

Post on 07.08.2006.

Vice-Chairman

mb

24.3.06  
W/s filed by the  
Respondent Nos. 3 & 4.

W/s filed by the  
Respondent Nos. 3 & 4

21.5.06

2-5-2006

① W/s filed by R. no  
3 & 4.

② No W/s from R. no  
1, 2, 5 & 6.

③ Notices to prt. Resps. (7-13)  
are missed by the  
Despatch Sec. as no  
record about the  
serving of notices by  
hand.

bm

16-5-06

① W/s filed on behalf  
of R. No- 3 & 4

② No W/s from R. No.  
1, 2, 5 & 6.

19.5.06

W/s filed by the  
Respondent Nos. 7 to 13

No Rejoinder has been  
filed.

9.6.06

07.08.2006

Learned counsel for the applicant wanted to file rejoinder. Let it be done.

Post on 29.08.2006

  
Member

  
Vice-Chairman

mb

29.8.06

The counsel for the applicant has submitted that he does not want to file written statement. Pleadings are completed. Post the matter on 28.9.06.

  
Vice-Chairman

lm

20.09.2006 Present: Hon'ble Sri K.V. Sachidanandan  
Vice-Chairman.

Division Bench matter, post before the next Division Bench.

  
Vice-Chairman

/mb/

15.3.07

Counsel for the applicant was represented and he has submitted that counsel for the applicant is out of station and ~~ssmk~~ prays for adjournment. post the matter before the next available Division Bench.

  
Member

  
Vice-Chairman

lm

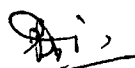
16.6.06

Reply by Respondent No. 1 has been filed.



26.6.06

W/S filed by the Respondent No. 2.



No rejoinder has been filed,

3.7.06

No Rejoinder has been filed.

28.8.06

No Rejoinder has been filed.

19.9.06

No rejoinder has been filed,

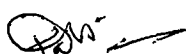
1.3.07

No rejoinder filed

14.3.07

16.3.07

Rejoinder submitted by the Applicant.



Notes of the Registry

13.02.2008

Heard Mrs. S. Choudhury, learned counsel appearing for the Applicant, and Mr. G. Baishya, learned Sr. Standing Counsel appearing for the Union of India, and Mrs. M. Das, Advocate, appearing for the State of Assam.

By filing M. P. No. 13 of 2008 the Applicant has expressed his desires to withdraw the Original Application No. 315 of 2005. A copy of this M.P. No. 13 of 2008 has already <sup>been</sup> served on the counsel appearing for the Respondents.

In the aforesaid premises, the M.P. No. 13 of 2008 is allowed and O.A. No. 315 of 2005 is dismissed as withdrawn. No costs.

(Khushiram)  
Member (A)

(M.R. Mohanty)  
Vice-Chairman

Lm

14/2/08

Copy sent to the  
Office for issuing the  
order to the applicant  
as well as to the depositee.

18.3.08

Issued vide O.A. No. 315  
1089 of 2005  
S. 2008  
S. 2008

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GA. 315/05

Minutes of the Registry

Order of the Tribunal

26.4.2007


Present: Hon'ble Shri G. Santhappa,  
Judicial Member.

Hon'ble Shri G. Ray,  
Administrative Member.

① Wks and Rejoinder  
filed by the parties.

M  
25.4.07

The learned counsel for the  
applicant are not present. Mr G.  
Baishya, learned Sr. C.G.S.C., Mrs  
M. Das, learned Government  
Advocate, Assam and Ms U. Das,  
learned counsel for the UPSC are  
present. The applicant has filed an  
application for adjournment. The  
application has been considered. On  
the application submitted by the  
applicant himself the case is  
adjourned. Post the matter before  
the next Division Bench.

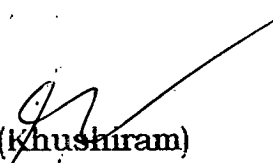
  
Member (A)


  
Member (J)

nm

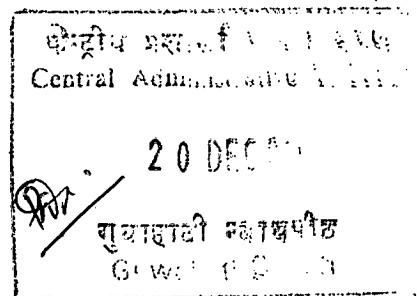
25.01.2008

Call this matter on 29.01.2008  
alongwith M.P. No.13 of 2008.

  
(Khushiram)  
Member (A)

  
(M.R. Mohanty)  
Vice-Chairman

lm



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:  
GUWAHATI BENCH: AT GUWAHATI.

ORIGINAL APPLICATION NO. 315/2005.

Sri Mufakhkher Ali

...Applicant.

- VERSUS -

The Union of India & Ors

...Respondents

**SYNOPSIS**

The applicant has by way of this application assailed the arbitrary and illegal action on the part of the Selection Committee constituted for the purpose of preparation of the select lists for promotion to the Assam segment of the IFS Assam-Meghalaya joint cadre against the vacancies available for 2002, 2003 and 2004 for effecting the selection by taking into consideration materials irrelevant for the purpose and the deprivation meted out to the applicant in considering his case for the said promotion by taking into account the departmental proceedings initiated against him and also his ACR's which were prepared with the said proceedings as its back drop. The said Departmental proceeding as initiated against the applicant in the year 2000 remained pending and was concluded only vide issuance of order dated 7.10.2005 exonerating the applicant from the Charges levelled



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against him in the said proceeding. Inspite of the said position the said aspect of the matter was not brought to the notice of the Selection Committee and notification bearing No. 17013/ 2/ 2003 - IFS, 2 dated 07.11.05, re-published by the Government of Assam Department of Environment and forests, vide the Annexure - 5, notification dated 14.11.05, came to be issued towards promoting the private respondents to the cadre of IFS against the vacancies as available for the years 2002, 2003 and 2004. The same has caused great prejudice to the applicant and he has been deprived of a proper consideration of his merit for the purpose of the said selection. As such this application seeking urgent and immediate reliefs.

Filed by  
Rana J. Bakhar  
(Advocate)

20 Dec 1985

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUMAHATI BENCH AT GUMAHATI.

ORIGINAL APPLICATION NO. 315/1985.

Sri Mufakhkher Ali

...Applicant.

- VERSUS -

The Union of India & Ors

...Respondents

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Filed by:

*Banani Chakravarty*  
(BANANI CHAKROVARTY)  
Advocate.

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH: AT GUWAHATI.**

*Filed by*

*The Applicant through  
by Basanti Chakravorty  
Advocate*

An Application under Section 19 of the Central Administrative Tribunal Act, 1985.

**ORIGINAL APPLICATION NO. 315/2005.**

Sri Mufakhkher Ali, Son of Late  
Mahboob Ali, Resident of 7th Mile,  
Jalukbari, Guwahati - 17, Kamrup,  
Assam.

**Applicant.**

**- VERSUS -**

✓ 1. The Union of India, represented  
by the Secretary to the Government  
of India, Ministry of Personnel,  
Public Grievances & Pension,  
Department of Personnel & Training,  
New Delhi.

2. The State of Assam, represented  
by the Chief Secretary to the  
Government of Assam, Dispur,  
Guwahati - 6.

3. The Union Public Service  
Commission, represented by its  
Secretary, Dholpur House, Sahajahan  
Road, New Delhi.

4. The selection committee (constituted for the purpose of preparation of the select lists for promotion to the Assam segment of the IFS Assam-Meghalaya joint cadre against the vacancies available for 2002, 2003 and 2004), through the Chairman Union Public Service Commission, Dholpur House, Sahajahan Road, New Delhi.

5. The Secretary to the Government of Assam, Department of Personnel, Dispur, Guwahati - 6.

6. The Commissioner & Secretary to the government of Assam, Forest Department, Dispur, Guwahati - 6.

7. Shri Sanjiv Bora, IFS

8. Shri Kailash Khargoria, IFS

9. Shri Abdul Kuddus, IFS

10. Shri Rup Nath Brahma, IFS

11. Shri Debiruz Zaman, IFS

12. Shri Mamat Kalita, IFS

13. Shri Khanindra Nath Barman, IFS /

(Respondents no.7 to 13 through the Principal Chief Conservator of Forests, Rehabari, Guwahati-8)

...Respondents.

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1. **PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:**

The present application is directed against the arbitrary and illegal action on the part of the Selection Committee constituted for the purpose of preparation of the select lists for promotion to the Assam segment of the IFS Assam-Meghalaya joint cadre against the vacancies available for 2002, 2003 and 2004 for effecting the selection by taking into consideration materials irrelevant for the purpose and the deprivation meted out to the applicant in considering his case for the said promotion by taking into account the departmental proceedings initiated against him and also his ACR's which were prepared with the said proceedings as its back drop.

This application is also directed against the issuance of the notification bearing No. 17013/ 2/ 2003 - IFS, 2 dated 07.11.05, re-published by the Government of Assam Department of Environment and forests, vide the Annexure - 5, notification dated 14.11.05, promoting the private respondents to the cadre of IFS against the vacancies as available for the years 2002, 2003 and 2004.

2. **JURISDICTION:**

The applicant declares that the cause of action of this application is within the jurisdiction of this Hon'ble Tribunal.

**3. LIMITATION:**

The applicant further declares that this application is filed within the period of limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985

**4. FACTS OF THE CASE:**

**4.1** That your humble applicant is a citizen of India and a permanent resident in the State of Assam and as such he is entitled to all the rights, protections and privileges guaranteed under the Constitution of India and Rules framed there under.

**4.2** That your humble applicant states that he had joined the Assam State Forest Service as an Assistant Conservator of Forest on 01.11.82. Thereafter, he was promoted to the Cadre of Deputy Conservator of Forest on 23.05.90. The applicant is presently working as Divisional Forest Officer at Mangaldoi, Social Forestry Division, Mangaldoi. The applicant had all along discharged his duties to the best of his ability and without blemish to any quarter.

**4.3** That your humble applicant states that while posted as Deputy Conservator of Forest in-charge, of Bishwanath Chariali Social Forestry Division, a show cause notice framing as many as five charges under the provisions of the Assam Services (Discipline and Appeal) Rules, 1964 came to be issued against the

applicant vide communication dated 18.11.00. The applicant submitted his show cause reply denying the charges levelled against him. It may be mentioned here that the charges that came to be framed against the applicant, were based on false and fabricated allegations and the same had no substance.

A copy of the said communication dated 18.11.00 is annexed as **Annexure - 1.**

**4.4** That your humble applicant states that not being satisfied with the reply as submitted by the applicant against the charges framed against him, the competent authority vide notification dated 22.09.03 proceeded to initiate a departmental enquiry against the applicant and appointed an Enquiry Officer and a Presenting Officer for the conduct of the said proceedings. It may be mentioned here that the reply as filed by the applicant against the charges levelled against him came to be rejected without there being a proper appreciation of the contentions as raised by the applicant therein.

A copy of the said notification dated 22.09.03 is annexed as **Annexure - 2.**

**4.5** That your humble applicant states that on conclusion of the enquiry the Enquiry Officer proceeded to submit his enquiry report on 04.07.05 and 11.08.05. The applicant had participated in the enquiry and had co-operated fully therein and inspite of the said fact, the enquiry initiated in pursuance of a show cause

notice dated 18.11.00 could be completed only on 11.08.05. The delay as occasioning in the matter was a ploy adopted by a vested circle in the department to some how sabotage the further advancement by the applicant in his service career, including promotions to the cadre of IFS.

4.6 That your humble applicant states that on receipt of the enquiry report from the Enquiry Officer, the matter was consider by the competent authority and on consideration of all aspects of the matter, decision was arrived at to drop the departmental proceedings initiated against the applicant and he was exonerated from all the charges levelled against him. The said aspect of the matter was communicated to the applicant and all concerned vide order dated 07.10.05. The applicant on being exonerated from the charges levelled against him, was free from any doubt the might have existed as regards the services being rendered by him.

A copy of the order dated 07.10.05 is annexed as **Annexure - 3.**

4.7 That your humble applicant states that the selection committee meeting for considering the cases of the offices in the zone of consideration for promotion to the Assam Segment of the Assam- Meghalaya Joint Cadre of the Indian Forest Service was not being convened held since w.e.f. 2002. Proceedings were initiated before this Hon'ble Tribunal and before



Hon'ble Gauhati High Court praying for directions upon the authorities to convene selection committee meeting for the year 2002. In terms of the directives as passed by this Hon'ble Tribunal and also by this Hon'ble High Court, the Union Public Service Commission convened the selection committee meetings for the vacancies identified in the Assam Segment of the said Joint Cadre for the year 2002, 2003 & 2004. Separate selection as mandated under the rules were held for the vacancies identified for each of the said years.

4.8 That your humble applicant states that he was within the zone of consideration for promotion to the said Cadre against the vacancies available for the years 2002, 2003 and 2004. In the gradation list of officers holding the post in the Cadre of Deputy Conservator of Forest as on 01.08.05, the name of the applicant appears at Sl. No. 8 .

A copy of the said Gradation list is annexed as **Annexure - 4.**

4.9 That your humble applicant states that he being within the zone of consideration his case was forwarded by the Government of Assam to the Union Public Service Commission along with other officers in the zone of consideration, for consideration of their cases for inclusion in the select lists of 2002, 2003 & 2004. The Government of Assam, while forwarding the name of the applicant to the Union Public Service Commission had disclosed about the pendency of a

departmental proceeding against the applicant and also about the nature of charges levelled against the applicant.

4.10 That your applicant states that the pendency of the said departmental proceeding initiated against the applicant was also taken into consideration while writing of his ACR's for the relevant period of time and the pendency of the said proceedings and the nature of the allegations levelled against the applicant lead to an improper assessment of the quality of works being discharged by him and his actual merit came to be suppressed in the ACR's. The ACR's of the applicant for the period 2000-01, 2001-02, 2002-03, came to be written with the pendency of the said proceedings as its back drop and the actual performance of the applicant during the said period was not reflected in its true and proper perspective.

4.11 That your humble applicant states that the procedure to be followed in the case of an officer, who is in the zone of consideration for promotion to the Cadre of Indian Forest Service and against whom a departmental enquiry is pending is that the selection committee is required to consider the case of the said officer by ignoring the charges levelled against him and in the event the person is found fit for promotion his name is required to be included in the select list to be prepared. The promotion of the said officer to

the cadre of Indian Forest Service would however depend on his exoneration from the charges levelled against him.

4.12 That your humble applicant states that the nature of allegations and charges framed against him vide communication dated 18.11.00 has the effect of projecting him as an officer not even fit for retention in service. The said charges were framed against him on a mistaken view of the matter and the same were without any basis. However, the same having been placed before the selection committee, it has the effect of clouding the merit of the applicant and the same along with the ACR's for the periods 2000-01, 2001-02, 2002-03, written with the said proceedings as its backdrop has the effect of denying to the applicant a proper assessment of his merit.

4.13 That your applicant states that with the issuance of the order dated 07.10.05 (Annexure - 3), the cloud that was hanging over the service career of the applicant came to removed and it was the bounded of authorities of the Forest department Government of Assam to take steps towards undoing all discriminations/ deprivations caused to the applicant. The ACR's of the applicant for the period after issuance of the charge sheet dated 18.11.00 was required to be recasted and the true and proper assessment of the works done by the petitioner during the said period was required to be reflected.

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4.14 That your humble applicant states that the Selection Committee meeting having been held before issuance of the order dated 07.10.05 (Annexure - 3), the fact of Departmental proceedings initiated against the applicant having been dropped and he having been exonerated of the charges levelled against him could not be brought to the notice of the selection committee. Accordingly, there was improper consideration of the case of applicant and his merit was assessed with the cloud hanging over it in view of the charges levelled against him. Further, the ACR's for the period when the said proceedings were pending having been written with the said proceedings as its backdrop, the same did not convey the true and proper assessment of the works being discharged by the applicant at that relevant point of time and the selection committee basing the selection on the said ACR's, naturally deprived to the applicant a proper consideration of his case.

4.15 That your humble applicant states that in pursuance to the recommendation as made by the selection committee and on approval of the same by the Union Public Service Commission, the Government of India vide Notification dated 07.11.05 was pleased to appoint the officers of the State Forest Service of Assam, to the Indian Forest Service on the basis of the select list for the year 2002, 2003 & 2004 and allocate them to the Assam -Meghalaya Joint Cadre. The said

notification dated 07.11.05 was re-published by the Government of Assam in the Department of Environment and Forest vide notification dated 14.11.05. The respondents no.7 to 13 accordingly came to be appointed by way of promotion to the IFS cadre.

A copy of the notification dated 14.11.05 is annexed as **Annexure - 5.**

4.16 That your humble applicant states that on perusal of the said notification dated 14.11.05, it would be clear that for the year 2002 four persons were appointed to the IFS Cadre and for the year 2003 one person was so appointed. For the year 2004 two persons have been appointed to the Cadre of IFS. The name of the applicant came to be excluded from the select list and from the said notification only because of the fact that the pendency of the departmental proceedings prevented a proper assessment of the merit and the allegations as levelled against him has had the effect of projecting him as an officer not even fit for retention in service.

4.17 That your humble applicant states that he was denied of his due and legitimate promotion to the IFS cadre against any of the vacancies available for the years 2002, 2003 and 2004 due to the said departmental proceedings pending against and the same having been dropped, a review selection was required to be held for a fresh consideration of his case along with others. The Government of Assam was required to rewrite the

ACR's of the applicant for the said periods and place the same before the section committee for consideration of his case along with the orders passed towards dropping of the said departmental proceedings. In such an eventually there existed no any earthly reason denying to the applicant his due and legitimate promotion to the cadre IFS against any of the vacancies available for the years 2002, 2003 and 2004.

**4.18** That your humble applicant states that inspite of the developments taking place in the matter with the dropping of the proceedings initiated against the applicant and the effect the same would have on the assessment of the merit of the applicant, the Government of Assam is yet to initiate any measures for rectifying the illegality committed against the applicant and this has denied to the applicant a proper consideration of his case on merit for the purpose of promotion to the cadre of IFS. Such a course of action as adopted in the matter is illegal, arbitrary and discriminatory and the recommendations as made in the case of the private respondents by the selection committee and the consequential notifications as issued towards promoting the private respondents to the cadre of IFS are illegal, arbitrary, discriminatory and the same cannot stand the scrutiny of law.

**4.19** That this applicant has been filed bonafide for securing the ends of justice.

5. **GROUNDS FOR RELIEF WITH LEGAL PROVISIONS**

5.1 For that the impugned action on the part of the respondent authorities is arbitrary, illegal and violative of the principles of Natural Justice and liable to be set aside and quashed.

5.2 For that the said selection committee having conducted the selection in clear violation of the procedure prescribed for such selection and having made recommendations ignoring relevant and vital materials, the whole selection process has been vitiated and the same is liable to be set aside and quashed.

5.3 For that the arbitrary and illegal action on the part of the selection committee in proceeding to conduct the said selection by considering the departmental proceedings pending against the applicant same has adversely affected the service career of the applicant and he has been deprived of his due legitimate promotion to the IFS cadre.

5.4 For that the departmental proceedings initiated and pending against the applicant having been dropped and he being exonerated of the charges framed against him vide issuance of the order dated 07.10.05 (Annexure - 3), the ACR's of the applicant for the years 1999-2000, 2000-01, 2001-02, 2002-03 ought to have been recasted inasmuch the said ACR's were written with the said departmental proceedings as its back drop resulting in suppression of the actual merit of the

applicant therein. Failure on the part of the authorities of the Government of Assam in taking due steps in this connection has resulted in denial to the applicant of a proper consideration of his actual merit resulting in denial of promotion to the applicant to the cadre of IFS.

**5.5** For that the dropping of the departmental proceedings initiated against the applicant having not been placed before the selection committee, there was an improper consideration in the case of the applicant, denying to him his due and legitimate right for inclusion in the select lists in question. The said infirmity goes to the very root of the selections held for the years 2002, 2003 and 2004 and accordingly the select lists prepared by the UPSC for the said years as well as the consequential orders of promotions issued basing on the same are liable to be set aside and quashed.

**5.6** For that the illegalities committed by the authorities has resulted in improper consideration and as such the recommendations of the selection committee and the consequential actions taken in pursuance thereof are ab-initio void and liable to be set aside and quashed.

**5.7** For that in any view of the matter the entire action of the respondent are liable to be set aside and quashed.



The applicant craves leave of the Hon'ble tribunal to advance more grounds both factual as well as legal at the time of hearing of the case.

**6. DETAILS OF THE REMEDY EXHAUSTED:**

The applicant declares that he has no other alternative and efficacious remedy except by way of filling this application.

**7. MATTERS NOT PENDING IN ANY OTHER COURT/ TRIBUNAL.**

The applicant declares that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, authority or any other bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

**8. RELIEFS PRAYED FOR:**

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs:

- (i) To set aside and quash the recommendations of the

selection committee constituted for preparation of the select lists for the years 2002, 2003 and 2004 for the purpose of promotion to the Assam segment of the IFS Assam- Meghalaya Joint Cadre.

(ii) To set aside and quash the notification bearing No. 17013/ 2/ 2003 - IFS, 2 dated 07.11.05 (re-published vide Annexure - 5, notification dated 14.11.05) along with the appointments by way of promotion made in favour of all the persons mentioned in the said notification dated 07.11.05.

(iii) To direct the respondent no. 2 to re-write the ACR's of the applicant for the years 2000-01, 2001-02 and 2002-03 by taking into account the exoneration of the applicant from the departmental proceedings initiated against him.

(iv) To direct the respondent authorities to hold an review selection for the vacancies identified for the years 2002, 2003 and 2004 and to consider the case of the applicant along with others on the basis of the fresh ACR's of the applicant required to be submitted by the Government of Assam.

(v) Cost of this application.

(vi) Any other relief/ relief's to which the applicant is entitled to.

9. **INTERIM RELIEF PRAYED FOR:**

The applicant at this stage does not pray for passing of any interim directions.

10. **PARTICULARS OF THE POSTAL ORDER:**

- i) IPD No. -
- ii) Issued from -
- iii) Payable at - Guwahati.

11. **DETAILS OF INDEX:**

An Index showing the particulars of documents is enclosed

12. **LIST OF ENCLOSURES:**

As per Index.

**VERIFICATION**

I, Shri Mufakhker Ali, son of late Mahboob Ali, aged about 46 years, resident of 7th Mile Jalukbari, Guwahati, in the district of Kamrup, Assam, do hereby solemnly affirm and verify that I am the applicant in this instant application and conversant with the facts and circumstances of the case, the statements made in paragraph 1, 2, 3, 4.1, 4.2, 4.5, 4.7, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 4.16, 4.17, and 4.19 or 5 to 12 ----- are true to my knowledge, those made in paragraphs 4.3, 4.4, 4.6, 4.8 and 4.15 ----- are true to my information derived from the records and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this the 16 the day of December, 2005, at Guwahati.

Mufakhker Ali  
Applicant

-19-  
GOVERNMENT OF ASSAM  
OFFICE OF THE CHIEF CONSERVATOR OF FORESTS  
SOCIAL FORESTRY, ASSAM, GUWAHATI

Annexure - 1 37

PHONE No.: (O) 451819  
(R) 333100

GRAM : MUKHYASAMAJBAN

Letter No.: SFE.10/33/Deptt.Pro/2000-2001  
Dated, Guwahati the 18th Nov.'2000.

To,

Sri M. Ali.  
Deputy Conservator of Forests,  
I/c. Biswanath Chariali  
Social Forestry Division,  
BISWANATH CHARIALI.

Sub :- DEPARTMENTAL PROCEEDING.  
Ref :- C.F., U.A.S.F. Circle's letter No. PS.17/M.Ali,  
(D.C.F.)/2050-52 dt. 9.10.2000.

You are hereby asked to show-cause under Rule '9' of the Assam Service (Discipline and Appeal) Rules 1964 read with Article 311 of the Constitution of India, why any of the penalties prescribed in Rule 7 of the aforesaid Rules should not be inflicted on you for the following Charges :-

1. Connivance in Misappropriation of Govt. Money.
2. Un-authorized Expenditure.
3. Submission of false report with malafide intentation.
4. Lack of Supervision leading to wasteful expenditure
5. Willfull insubordination.

Detail of the above Charges are shown in the Statement of allegation made by the Conservator of Forests, Upper Assam Social Forestry Circle, Nagaon against you and is attached herewith for your necessary action and reply.

Please note that your reply should reach to the undersigned within twenty days from the date of receipt of this letter failing which necessary action will be taken against you without making any further correspondences.

( K. N. Devgoswami, )

Chief Conservator of Forests, Social Forestry,  
Assam, Guwahati-24.

Enclo.: As above.

Copy to :- 1. The Commissioner & Secretary to the Govt. of Assam Forest Department, Dispur, Guwahati-6 for favour of information.

2. The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati-781 008 for information.

3. The Conservator of Forests, Upper Assam Social Forestry Circle, Nagaon for information and necessary action. This has a reference to his letter No. mentioned under reference.

Chief Conservator of Forests, Social Forestry,  
Assam, Guwahati-24.

R. Ahmed.

33000000

Certified to be true Copy

Ann: 2002  
Advocate

GOVERNMENT ASSAM  
DEPARTMENT OF ENVIRONMENT AND FORESTS: DISPUR.  
RECEIVED

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 22nd September, 2003.

NO. FRE. 62/2001/500 :- The Governor of Assam is pleased to appoint Shri J.N. Kouli, IFS, Conservator of Forests, Upper Assam Social Forestry Circle, Nagaon as Enquiry Officer under Rule 9(4) of the Assam Services (Discipline and Appeal) Rules, 1964 to enquire into the charges levelled against Shri M. Ali, the then Divisional Forest Officer, Bivasanath Chariali Social Forestry Division now Divisional Forest Officer, Silvicultural Division, Hills, Diphu vide Govt. letter No. FRE. 62/2001/406, dtd. 12.12.2002. He is to submit the report of inquiry alongwith findings within the shortest possible time.

NO. FRE. 62/2001/500-A :- The Governor of Assam is pleased to appoint Shri Kunja Hazarika, Divisional Forest Officer, Social Forestry Division, Bivasanath Chariali as Presenting Officer under Rule 9(5) of the Assam Services (Discipline and Appeal) Rules, 1964 to present the case before the Enquiry Officer in support of the charges levelled against Shri M. Ali, Divisional Forest Officer vide Govt. letter No. FRE. 62/2001/406, dtd. 12.12.2002.

By order and in the name  
of the Governor.

Sd/- L. Rynjah,  
Principal Secretary to the Govt. of Assam,  
Department of Environment and Forests,  
Dispur.

Memo No. FRE. 62/2001/500-B. Dated Dispur, the 22nd September, 2003.  
Copy to :-

- 1) Shri J.N. Kouli, IFS, Conservator of Forests, Upper Assam Social Forestry Circle, Nagaon alongwith copy of the show cause notice No. FRE. 62/2001/406, dtd. 12.12.2002 and copy of the defence statement submitted by Shri M. Ali, D.F.O. vide No. O/SLM/2003-04/505, dtd. 18.7.2003.
- 2) Shri Kunja Hazarika, Divisional Forest Officer, Social Forestry Division, Bivasanath Chariali alongwith a copy of show cause notice No. FRE. 62/2001/406, dtd. 12.12.2002.
- 3) The Principal Chief Conservator of Forests, Assam, Bhubari, Guwahati-8.
- 4) The Chief Conservator of Forests (Social Forestry), Assam, Basistha, Guwahati-29.
- 5) Shri M. Ali, Divisional Forest Officer, Silvicultural Division, Hills, Diphu.

By order etc.

Deputy Secretary to the Govt. of Assam,  
Department of Environment and Forests,  
Dispur.

22.9.03

....

Copy to  
Shri J.N. Kouli

GOVERNMENT OF ASSAM  
DEPARTMENT OF ENVIRONMENT AND FORESTS  
DISPUR :: GUWAHATI

Annexure - 3

No. FRE. 62/2001/587

Dated Dispur, the 7th Oct., 2005.

ORDERS BY THE GOVERNOR

Whereas the departmental proceeding was drawn up against Shri M. Ali, the then Divisional Forest Officer, Silvicultural Division, Diphu vide No. FRE. 62/2001/406 dated 12.12.2002 on some charges during his tenure as Divisional Forest Officer Biswanath Chariali Social Forestry Division, Biswanath Chariali.

And whereas Shri M. Ali, DFO had submitted his written statement vide his letter No. B/SLH/2003-04/505 dated 10.7.03 denying all the charges levelled against him.

And whereas Shri J.M. Kouli, IFS, Conservator of Forests, Upper Assam Social Forestry Circle, Nagaon was appointed Enquiry Officer vide Notification No. FRE. 62/2001/508 dated 22.9.2003.

And whereas the Enquiry Officer had enquired into the charges levelled against Shri Ali and submitted his findings vide his letter No. PS.17/M.Ali(DCF)UASFC/7674-76 dated 4.7.05, No. PS.17/M.M.Ali(DCE)765 dated 29.7.05 and No. PS.17/M.Ali(DCF)997 dated 11.8.05.

ORDER : After careful examination of all aspects including the findings of the Enquiry Officer, the Governor of Assam is pleased to drop the Departmental Proceedings against Shri M. Ali and he has been exonerated from all the charges.

Shri M. Ali, DFO is however, warned to be careful in future in view of the charges No. 1 and 2 levelled against him.

Sd/-

Commissioner & Secretary to the  
Govt. of Assam, Environment & Forest Deptt.  
Dated Dispur, the 7th Oct., 2005.

Memo No. FRE. 62/2001/587-A  
Copy to :-

1. The Principal Chief Conservator of Forests, Assam, Guwahati - 0.
2. The Chief Conservator of Forests (Social Forestry) Assam, Dabitha, Guwahati - 29.
3. The Conservator of Forests, Upper Assam Social Forestry Circle, Nagaon.
4. Shri M. Ali, Divisional Forest Officer, Darrang Social Forestry Division, Mangaldoi.

By order etc..

Joint Secretary to the Govt. of Assam,  
Environment and Forest Department.

Verified to be true  
Advocate

GOVERNMENT OF ASSAM  
DEPARTMENT OF ENVIRONMENT AND FORESTS  
DISPUR ::: GUWAHATI

ORDERS BY THE GOVERNOR  
NOTIFICATION

Dated Dispur, the 25th August, 2005.

No. FRE. 106/99/2004 : The Governor of Assam is pleased to fix the inter-se-seniority of the Deputy Conservator of Forests as on 1st..August./ 2005 and publish the draft list as per statement enclosed.

be made - Objection if any on the draft seniority list of Deputy Conservator of Forests with necessary supporting documents to Environment and Forest Department within 60 days from the date of publication of this Notification. In no case objections received after the specified period mentioned above will be entertained.

Sd/- R.N. Sarma,  
Secretary to the Govt. of Assam,  
Environment & Forest Department.

Memo No. FRE. 106/99/2004 -A Dated Dispur, the 25th August, 2005.

Copy to :-

1. The principal Chief Conservator of Forests, Assam, Rehabari Guwahati - 8.
2. The Chief Conservator of Forests .....
3. The Conservator of Forests ..
4. The Director Kaziranga National Park, Bokakhat/ Field Director, Manas Tiger Project, Darpeta Road.
5. Shri ... *Hausfalkhaker A.C. DFO Damanag S.F. Division, Damanag*

By order etc.,

*20/8/05*  
Joint Secretary to the Govt. of Assam,  
Environment and Forest Department.

*Verified to be true copy*

*Advocate*



STATEMENT SHOWING THE INTER-SERVICE SENIORITY OF THE DEPUTY CONSERVATOR OF FORESTS

Sl. No.	Name of officers	Date of Birth	Date of Entry into Govt. Service	Date of Entry into A.F.S. (Class-I) service	Date of promotion to D.C.F.	Whether SC/ST (P)/S.T(H)	Remarks
1	2	3	4	5	6	7	8
1.	Shri Komat Kalita ✓	1.4.1950	31.3.1972	11.2.1981	22.3.1985		
2.	Shri Prasanta Pran Changkakati	28.2.1956	11.2.1981	11.2.1981	22.3.1985		
3.	Shri Sanjib Kr. Bora ✓	1.1.1953	6.11.1981	6.11.1981	22.3.1985		
4.	Shri Kailash Khargharia ✓	12.3.1952	31.1.1982	31.1.1982	22.3.1985		
5.	Mr. Abdul Kuddus ✓	1.1.1953	1.11.1982	1.11.1982	26.3.1985		
6.	Shri Rup Nath Brahma ✓	1.8.1955	1.11.1982	1.11.1982	22.3.1985		
7.	Mr. Debiruz Zaman ✓	14.1.1956	1.11.1982	1.11.1982	22.3.1985	S.T.(P)	
8.	Mr. Mufakkar Ali ✓	19.1.1959	1.11.1982	1.11.1982	22.5.1990		
9.	Shri Khanindra Nath Garman ✓	1.1.1956	1.11.1982	1.11.1982	22.5.1990		
10.	Shri Mohendra Nath Guarah	1.10.1958	1.11.1982	1.11.1982	20.9.1990		
11.	Shri Arup Kr. Das	1.1.1957	1.11.1982	1.11.1982	21.11.1986	S.C.	
12.	Shri Amarendra Ch. Das	1.4.1955	2.4.1984	2.4.1984	23.3.1993		
13.	Shri Ranjit Ch. Goswami	1.1.1953	2.4.1984	2.4.1984	23.3.1993		
14.	Shri Hem Kanta Tlukdar	31.12.1961	2.4.1984	2.4.1984	23.3.1993		
15.	Shri Chitta Ranjan Ghobore	1.1.1956	26.4.1980	2.4.1984	2.5.1990	S.T.(P)	
16.	Shri Amrit Kr. Das	1.3.1961	7.4.1984	7.4.1984	2.5.1990	S.C.	

Contd...2/-

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Annexure- 5  
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GOVERNMENT OF ASSAM  
DEPARTMENT OF ENVIRONMENT AND FORESTS  
DISPUR ::: GUWAHATI

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 14th Nov. '05.

No. FRE. 109/94/Pt-III/367 : The Following notification issued by the Government of India, Ministry of Environment and Forests, New Delhi is re-published for general information.

F. No. 17013/2/2003-IFS,II dated 7.11.05

GOVERNMENT OF INDIA  
MINISTRY OF ENVIRONMENT AND FORESTS  
PARIVAHAN BHAWAN, CGO COMPLEX  
LOCHI ROAD, NEW DELHI-110 003.

New Delhi, the 7th November, 2005.

NOTIFICATION

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Indian Forest Service (Recruitment) Rules, 1966, read with sub-regulation (1) of Regulation 9 of the Indian Forest Service (Appointment by Promotion) Regulation, 1960, the President is pleased to appoint with immediate effect the under mentioned seven officers of the State Forest Service of Assam, to the Indian Forest Service on the basis of the Select Lists for the year 2002, 2003 and 2004 and to allocate them to the Assam - Meghalaya Joint-Cadre of the Indian Forest Service under Sub-rule (1) of Rule 5 of the Indian Forest Service (Cadre) Rules, 1966.

Select List of 2002

Sl.No.	Name of the Officer	Date of birth
1.	Shri Sanjib Kr. Dore	01-01-1950
2.	Shri Kailash Khargharia	12-03-1952
3.	Mr. Abdul Kuddus	01-01-1953
4.	Shri Raj Nath Brahma	01-08-1955

Select List of 2003

Sl.No.	Name of the Officers	Date of birth
1.	Mr. Debiruz Zaman	14-01-1956

Contd...2/-

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Advocate

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Select List of 2004

Sl. No.	Name of the Officer	Date of Birth
1.	Shri Mamat Kalita	01-04-1950
2.	Shri Khanindra Nath Barman	01-01-1956

Sd/-

(ASHOK KUMAR)

Under Secretary to the Govt. of India.

Sd/-

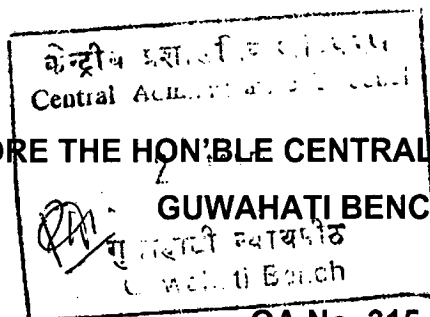
Commissioner & Secretary to the Govt. of Assam, Environment and Forest Department.

Memo No. FRE. 109/94/Pt-III/367-A Dated Dispur, the 14th Nov'05.  
Copy forwarded to :-

1. The Accountant General (A&E), Assam, Beltola, Guwahati - 29.
2. The Under Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi - 110 003.
3. The Chief Secretary, Meghalaya, Shillong.
4. The Principal Secretary Government of Meghalaya, Forest and Environment Department, Shillong.
5. The Principal Chief Conservator of Forests, Assam, Rehbari, Guwahati - 8.
6. The Principal Chief Conservator of Forests, Meghalaya, Shillong.
7. The Chief Conservator of Forests ...
8. The P.S. to Chief Secretary, Assam, Dispur.
9. The Deputy Secretary to the Govt. of Assam, Personnel (A) Department, Dispur.
10. The Conservator of Forests .....
11. The Field Director, Manas Tiger Project, Darpeta Road.
12. The Director, Kaziranga National Park, Bokakhat.
13. Shri .....
14. The P.S. to the Minister of State (Ind), Environment and Forest Department, Assam, Dispur for favour of information of Minister.
15. Personal file of the Officers.
16. The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati - 21 for favour of publication of the above notification in the Assam Gazette.

By order etc.,

Joint Secretary to the Govt. of Assam,  
Environment & Forest Department.



BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

OA No. 315 OF 2005

MUFAKHKHER ALI:

APPLICANT

VERSUS

UNION OF INDIA & OTHERS:

RESPONDENTS

WRITTEN STATEMENT ON BEHALF OF THE UNION PUBLIC  
SERVICE COMMISSION (RESPONDENT No.3) & THE SELECTION  
COMMITTEE (RESPONDENT No.4)

Reply Statement of R.S. Sinha, S/o (Late) Shri R.N.P.Sinha, posted as Under Secretary in the Union Public Service Commission, New Delhi.

2. I solemnly affirm and state that I am an officer in the Union Public Service Commission, and am authorised to file the present Reply Statement on behalf of Respondent No.3 and 4. I am fully acquainted with the facts of the case as gathered from the records of the Commission and stated below:

3. That I have read and understood the contents of the above Application and in reply I submit as under:

4.1 At the outset, it is submitted that the Union Public Service Commission, being a Constitutional body, under Articles 315 to 323 Part XIV (Services under the Union and the States) Chapter-II of the Constitution, discharge their functions, duties and Constitutional obligations assigned to them under Article 320 of the Constitution. Further, by virtue of the provisions made in the All India Services Act, 1951, separate Recruitment Rules have been framed for the IAS/IPS/IFS. The IFS (Appointment by Promotion) Regulations, 1966 [Promotion Regulations, in short] have been made in pursuance of these Rules. In accordance with the provisions of the said Regulations, the Selection Committee presided, over by the Chairman/Member of the Union Public Service Commission, makes selection of State Forest Service [SFS in short] officers for promotion to the Indian Forest Service.

(रवि संकर सिन्हा R. S. SINHA)  
प्रवर सचिव/Under Secretary  
सर्व लोक सेवा आयोग  
Union Public Service Commission  
नई दिल्ली/Howrah, West Bengal-700001

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Filed by  
the Respondent Nos.3 & 4 through  
Alsha Don.  
Addl. Secy  
22/2/06

4.2 Further, in discharge of their Constitutional obligations, the Union Public Service Commission, after taking into consideration the records received from the State Government under Regulation 6(i) and observations of the Central Government received under Regulation 6(ii) of the Promotion Regulations, take a final decision on the recommendations of the Selection Committee in accordance with the provisions of Regulation 7 of the aforesaid Regulations. The selections are done, in a fair and objective manner on the basis of the relevant records and following the relevant Rules and Regulations.

## 5. PRELIMINARY SUBMISSIONS

5.1 It is respectfully submitted that in terms of Rule 4(3)(b) of the IFS (Recruitment) Rules, 1966 read with Regulation 5(1) of the IFS (Appointment by Promotion) Regulations 1966, the Central Govt., in consultation with the State Government concerned, determines the number of posts for recruitment by promotion of SFS officers of the State to the IFS during the particular year. Thereafter, the State Government forwards a proposal to the Commission alongwith the Seniority List, Eligibility List (upto a maximum of three times the number of vacancies) of the State Service Officers, Integrity Certificates, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers.

5.2 The above documents received from the State Govt. are examined by the Commission for completeness and after the deficiencies have been resolved, a meeting of the Selection Committee is convened for preparing the Select List for promotion to the IFS. As per Regulation 3 of the said Regulations, the meeting of the Selection Committee is presided over by either the Chairman or a Member, UPSC.

5.3 In accordance with the provisions of Regulation 5(3A) of the Promotion Regulations, the aforesaid Committee duly classifies the eligible State Forest Service officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of their service records. Thereafter, as per the provisions of Regulation 5(4) of the said Regulations, the Selection Committee prepares a list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst

(रवि शंकर सिन्हा R. S. SINHA)  
 सचिव/Under Secretary  
 सघ लोक सेवा आयोग  
 Union Public Service Commission  
 नई दिल्ली/ New Delhi-110069

those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Forest Service. Regulations 5 (3A) and 5 (4) provides as under:

"5(3A) The Selection Committee shall classify the eligible officers as 'Outstanding', 'Very Good', 'Good' and 'Unfit' as the case may be on an overall relative assessment of their service records.

5(4) The List shall be prepared by including the required number of names, first from amongst the officers finally classified as 'Outstanding' then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Forest Service."

5.4 It is further submitted that the ACRs of eligible officers are the basic inputs on the basis of which they are categorised as 'Outstanding', 'Very Good', 'Good' and 'Unfit' in accordance with the provisions of Regulation 5(3A) of the Promotion Regulations. The Committee does not base its assessment of officers on any synopsis done by the State Govt. as contended by the Petitioner. As per the uniform and consistent procedures and practices followed in case of promotions to the All India Services, the Selection Committee examines the service records of each of the eligible officers, with special reference to the performance of officers during the years preceding the year for which the Select List is being prepared, deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACRs for different years and then, after detailed deliberations and discussions, finally arrives at a classification to be assigned to each eligible officer in accordance with the provisions of the Promotion Regulations. While doing so, the Selection Committee also reviews and determines the overall grading recorded in the ACRs to ensure that this is not inconsistent with the grading/remarks under various parameters or attributes recorded in the respective ACRs. However, the final grading assigned by the Selection Committee may be different from his final ACR grading. The grading given by the reporting/reviewing officers in the ACRs reflects the merit of the officer reported upon in isolation whereas the classification made by the Selection Committee is on the basis of a logical and in-depth examination of the service records of all the eligible officers in the zone. The Selection Committee also takes

into account orders of appreciation for meritorious work done by the concerned officers, if any. Similarly it also keeps in view orders awarding penalties or any adverse remarks communicated to the officer, which even after due consideration of his representation, have not been completely expunged. The Selection Committee makes its assessment in a fair and objective manner. The procedure adopted by the Selection Committee in preparing the Select Lists is uniformly and consistently applied for all States and Cadres for induction of the State Service officers into the All India Services.

5.5 It is further submitted that the Selection Committee undertakes the detailed exercise enumerated above solely with a view to ensuring objectivity and fairness in the selections. The Selection Committee follow uniform procedures, norms and yardsticks for evaluation of ACRs of officers in the zone of consideration, and apply the same uniformly and consistently to all States/Cadres for induction to the All India Services.

5.6 The matter relating to assessment made by the Selection Committee has been contended before the Hon'ble Supreme Court in a number of cases. In the case of Nutan Arvind Vs. Union of India & Others, the Hon'ble Supreme Court have held as under:-

"When a high level Committee had considered the respective merits of the candidates, assessed the grading and considered their cases for promotion, this Court cannot sit over the assessment made by the DPC as an appellate authority."

[(1996) 2 SUPREME COURT CASES 488]

5.7 In the case of Durga Devi & Another Vs. State of Himachal Pradesh & Others, the Apex Court have held as under:-

"In the instant case, as would be seen from the perusal of the impugned order, the selection of the appellants has been quashed by the Tribunal by itself scrutinising the comparative merits of the candidates and fitness for the post as if the Tribunal was sitting as an appellate authority over the Selection Committee. The selection of the candidates was not quashed on any other ground. The Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment was the function of the Selection Committee. The observations of this Court in Dalpat Abasaheb case are squarely attracted to the facts of the case. The order of the Tribunal under the circumstances cannot be sustained. The appeal succeeds. The impugned order dated 10/11/1994 is quashed and the matter is remitted to the Selection Committee for fresh consideration."

(1996) 2 SUPREME COURT CASES 488

fresh disposal on other points in accordance with the law after hearing the parties."

[1997(4)-SCC -575]

5.8 In the case of State of Madhya Pradesh Vs. Shrikant Chapekar, the Hon'ble Supreme Court has held as under:-

"We are of the view that the Tribunal fell into patent error in substituting itself for the DPC. The remarks in the ACR are based on the assessment of the work and conduct of the official/officer concerned for a period of one year. The Tribunal was wholly unjustified in reaching the conclusion that the remarks were vague and of general nature. In any case, the Tribunal outstepped its jurisdiction in reaching the conclusion that the adverse remarks were sufficient to deny the respondent his promotion to the post of Dy. Director. It is not the function of the Tribunal to assess the service record of a Government servant, and order his promotion on that basis. It is for the DPC to evaluate the same and make recommendations based on such evaluation. This Court has repeatedly held that in a case where the Court/Tribunal comes to the conclusion that a person was considered for promotion or the consideration was illegal then the only direction which can be given is to reconsider his case in accordance with law. It is not within the competence of the Tribunal, in the fact of the present case, to have ordered deemed promotion of the respondent".

[JT 1992 (5) SC 633]

5.9 In the case of Dalpat Abasaheb Solunke Vs. B S Mahajan, the Hon'ble Supreme Court have held as under:-

"It is needless to empahsise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinise the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject."

[AIR 1990 SC 434]

5.10 In the case of Smt. Anil Katiyar Vs. Union of India & Others, the Hon'ble Supreme Court have held as under:-

"Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service of a Civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgement over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides."

[1997(1) SLR 153]

(रवि शंकर सिन्हा, R. S. SINHA)  
 सचिव/Under Secretary  
 लोक सेवा आयोग  
 Service Commission  
 New Delhi-110069:



5.11 It is further submitted that the Promotion Regulations also provide for consideration of officers whose integrity certificate is withheld by the State Govt. or against whom there are disciplinary/criminal proceedings / unexpunged adverse entries in their Service records. If such officers are found fit for inclusion in a Select List on the basis of the overall assessment of their service records in terms of Regulation 5 (3A) and 5(4) then they are included in the Select Lists provisionally in accordance with the provisions of proviso to Regulation 5(4). The first and second proviso to Regulation 5(4) of the Promotion Regulations reads as under: -

"Provided that the name of an officer so included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government."

"Provide further that while preparing year-wise Select Lists for more than one year pursuant to 2<sup>nd</sup> proviso to sub regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the Select List determined by the Central Government for that year."

5.12 As per the provisions of Regulation 6 and 6-A, the State Govt. and the Central Govt. are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Govt. and the Central Govt. and the requisite records received from the State Govt., the Commission take a final decision on the recommendations of the Selection Committee with or without modifications in terms of the provisions of Regulation 7. The appointments to the IFS are made from the Select List by the Central Govt., Ministry of Environment & Forests during the validity period of the Select List

5.13 It is further submitted that as per the second proviso to Regulation 7(4) of the Promotion Regulations, the name of an officer who has been included provisionally in a particular Select List can be made unconditional by the Commission if a proposal for the same is received

(रवि शंकर सिंह B. S. SINHA)  
वरिष्ठ/Under Secretary  
एन सी ई सी आयोग  
Union Public Service Commission  
New Delhi-110069

from the State Government while the said Select List is valid. Once such a proposal is received from the State Govt. within the validity of the Select List, the Commission shall decide the matter within a period of forty five days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under Regulation 9 of the IFS Promotion Regulations and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force.

5.14 Regarding validity of the Select List, it is submitted that In accordance with the provisions of Regulation 7(4) of the IFS Promotion Regulations, the Select List shall remain in force till the 31<sup>st</sup> day of December of the year in which the meeting of the Selection Committee was held or up to 60 days from the date of approval of the Select List by the Commission, whichever is later.

#### **FACTS OF THE CASE**

6. It is respectfully submitted that a Selection Committee Meeting was held on 13.06.2005 to prepare the year-wise Select List of 2002, 2003 & 2004 for promotion of SFS officers to the IFS of Assam-Meghalaya Joint cadre, Assam Segment against 04 (four), 01 (one) and 02 (two) vacancies respectively determined by the Govt. of India. Accordingly, the zone of consideration for the year 2002, 2003 and 2004 was 12, 03 and 06 respectively. The Committee considered the name of the applicant at S.No. 07, 03 and 02 in the eligibility lists for the years 2002, 2003 & 2004 respectively. The Applicant was assessed by the Committee as 'Good' for all the three years on an overall assessment of his service records. On the basis of this assessment, his name could not be included in any of the Select Lists as officers having higher grading were available for inclusion in the Select Lists under the provisions of Regulations 5(4) and also due to the statutory limit on the size of the Select Lists for the respective years. As such, the officer was duly considered for promotion to the IFS in accordance with the rules and regulations, but could not be included in any of the Select List on account of comparatively lower gradings.

R. S. Sinha

(उप सचिव) Under Secretary  
उप सेवा आयोग  
Union Public Service Commission  
New Delhi-110069

## MAIN CONTENTIONS OF THE APPLICANT

7. The Applicant has filed the instant OA on the following grounds: -

- (i) That the Selection Committee that met on 13.06.2005 to prepare the year-wise Select List of 2002, 2003 & 2004 for promotion of SFS officers to the IFS of Assam-Meghalaya Joint cadre, Assam Segment conducted the selection in violation of the procedure prescribed for such selection and made recommendations ignoring relevant and vital materials.
- (ii) That consideration of the departmental proceedings pending against the applicant by the Selection Committee in proceeding to conduct the said selection has adversely affected the service career of the applicant and he has been deprived of his due legitimate promotion to the IFS cadre.
- (iii) That the departmental proceedings initiated and pending against the applicant having been dropped and he being exonerated of the charges framed against him vide issuance of the order dated 07.10.2005, the ACR's of the applicant for the years 1999-2000, 2000-01, 2001-02, 2002-03 ought to have been re-casted inasmuch the said ACR's were written with the said departmental proceedings as its back drop resulting in suppression of the actual merit of the applicant therein. Failure on the part of the authorities of the Government of Assam in taking due steps in this connection has resulted in denial to the applicant of a proper consideration of his actual merit resulting in denial of promotion to the applicant to the cadre of IFS. ✓
- (iv) That the dropping of the departmental proceedings initiated against the applicant having not been placed before the Selection Committee, there was an improper consideration in the case of the applicant denying to him his due and legitimate right for inclusion in the select lists in question. The said infirmity goes to the very root of the selections held for the years 2002, 2003 and 2004 and accordingly the select lists prepared by the UPSC for the said years as well as the consequential orders of promotions issued basing on the same are liable to be set aside and quashed.

## REPLY TO THE CONTENTIONS

8.1 In reply to the contention of the Applicant made in para 7(i) above, it is most respectfully submitted that, the Selection Committee that met on 13.06.2005 assessed all the officers for inclusion in the Select List based on an overall relative assessment of their service records made available by the State Govt. in accordance with Regulation 5 (3A) and 5 (4) of the Promotion Regulations, by applying uniform standard/yardstick as brought

(Rajendra Sinha, R. S. SINHA)  
Under Secretary  
Assam Public Service Commission  
Disputes Cell  
Bistha Bistha 10969

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in para 5.3 to 5.5 above. The Selections were made in a fair and objective manner, as is done for all States/Cadres for induction to the All India Services.

8.2 Regarding contention of the applicant at para 7(ii) to 7 (iv) above it is submitted that, as already outlined in para 5.11 above, the Promotion Regulations provide for the consideration of officers whose Integrity Certificate has been withheld by the State Govt. or against whom there is a pending Departmental enquiry/Criminal enquiry /unexpunged adverse remark. As explained in para 5.11 above, such an officer is assessed on the basis of his service records, and if found otherwise suitable, he is included in the Select List on a provisional basis. Thus it is clear that the inclusion of an officer in the Select List depends only on the overall relative assessment of his service records done by the Selection Committee and the pendency of Departmental enquiry/Criminal enquiry/ adverse remarks or withholding Integrity Certificate can only make his inclusion in the Select List provisional, without having any bearing on the overall assessment itself.

8.3 It is further submitted that the State Government is solely responsible for forwarding the necessary proposals including the list of eligible officers in order of their seniority. In the instant case, the State Govt. had informed before the Selection Committee Meeting that there was a Departmental Enquiry pending against the applicant. Further, as the applicant has himself submitted, he was exonerated of charges against him vide the State Govt. order dated 07.10.2005. As such, there was a Departmental Enquiry pending against him at the time of the meeting. However, the Selection Committee considered the applicant at Sl. No. 7,3 and 2 of the eligibility list for the Select Lists of 2002, 2003 and 2004 respectively. On an overall assessment of his service records the Committee graded him as 'Good' for all these years. He could not be included in any of the Select Lists on the basis of this grading as there were officers with better grading available for inclusion and due to the statutory limit on the size of the Select List. Thus, his non-inclusion in the Select List was on account of his lower gradings assigned to him by the Selection Committee on the basis of an in depth assessment of his service records. As explained in para 8.2 above, the pendency of Departmental Enquiry against him could only have made his inclusion

R. S. Sinha

(र. सी. सिन्हा R. S. SINHA)  
 सचिव/Under Secretary  
 लोक सेवा आयोग  
 Union Public Service Commission  
 New Delhi-110069

provisional if he had been recommended for inclusion in the Select List on the basis of his gradings.

8.4 As regards the contention of the applicant that the failure on the part of the State Govt. to re-cast his ACRs for the years 1999-2000, 2000-01, 2001-02, 2002-03 after the departmental proceedings initiated and pending against him were been dropped and he was exonerated, resulted in denial to the applicant of a proper consideration of his actual merit and denial of his promotion to the IFS, it is respectfully submitted that the custody and maintenance of ACRs of the SFS officers is subject matter with which the State Govt. are concerned. Therefore, the submission being made by them in this regard may kindly be referred to.

9. That save those points, which have expressly been admitted hereinabove others may be deemed to have been denied by the answering Respondent.

10. In view of the facts and circumstances stated above, the Hon'ble Tribunal may be pleased to dismiss the OA.

*R. S. Sinha*  
Deponent

(र. सी. सिंह, R. S. SINHA)  
अवर सचिव/Under Secretary  
सर्वोच्च सेवा आयोग  
Union Public Service Commission  
New Delhi-110069

#### VERIFICATION

I do hereby declare that the contents of the above Statement are believed by me to be true based on the records of the case. No part of it is false and nothing has been concealed there from.

Verified at New Delhi on the 16<sup>th</sup> day of March, 2006.

*R. S. Sinha*  
Deponent

(र. सी. सिंह, R. S. SINHA)  
अवर सचिव/Under Secretary  
सर्वोच्च सेवा आयोग  
Union Public Service Commission  
New Delhi-110069

19 MAY 2005

गुवाहाटी न्यायपीठ  
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH AT GUWAHATI

Original Application No. 315 of 2005

IN THE MATTER OF :

O.A. No. 315 of 2005

Sri Mufakar Ali

..... Applicant

- Versus -

Union of India & Ors.

... Respondents

- AND -

IN THE MATTER OF :

Written statement on behalf of the  
Respondents No. 7 to 13 to the Original  
Application filed by the applicant.

**WRITTEN STATEMENT ON BEHALF OF THE RESPONDENTS NO. 7  
TO 13 TO THE APPLICATION FILED BY THE APPLICANT.**

I, Shri Khanindra Nath Barman, IFS, son of *... Sri. Bhulanarayan Barman*  
presently working as Deputy Conservator of Forest (Publicity), Office of the  
Chief Conservator of Forest (SF), Assam, Basistha, Guwahati - 23, do hereby  
solemnly affirm and declare as follows :

1. That I have been impleaded as party respondent No. 13 in the above application. Accordingly, a copy of the same has been served upon me. I have gone through the same and have understood the contents thereof. I am conversant with the facts and circumstances of the case thereof. I have been authorized to file this written statement on behalf of all the private respondents, i.e. Respondent Nos. 7, 8, 9, 10, 11 and 12. I do not admit any statements, which do not specifically admitted hereinafter and the same are deemed as denied.
2. That the statements made in paragraph 4.1 of the application, the humble deponent has nothing to make comment on it. He, however, does not admit any statements, which are contrary to records.

Filed by:-

Sri Khanindra Nath Barman & Ors  
- Respondents Nos 7 to 13

Through:- Lipika Devi  
Advocate  
CAT 2/5/06

3. That with regard to the statement made in paragraphs 4.2 to 4.9 of the application, the humble answering respondent has nothing to make comment on it as they are being matters of records of the case. He, however, does not admit any statements, which are contrary to records.
4. That with regard to the statement made in paragraphs 4.10 to 4.14 of the application, the humble deponent has nothing to make comment on it. He, however, does not admit any statement, which are contrary to records.
5. That with regard to the statement made in paragraph 4.15 of the application, the humble deponent begs to state that the Selection Committee after objective assessment alongwith merit and suitability with due regard to the seniority prepared the select list 2002, 2003, 2004 by selecting 7 officers (Respondents No. 7 to 13) for promotion to the post of IFS. Thereafter, a notification dated 14.11.2005 under No. FRE/94/Part.III/367 issued by the Commissioner and Secretary to the Government of Assam, Environment and Forest Department. *by appointing the Private Respondents to the IFS.* Accordingly, all the private respondents joined in the Assam-Meghalaya Joint Cadre of the IFS. The Respondent No. 7 joined on 14.11.2005 in the IFS cadre and the other respondent Nos. 8 to 13 joined on 16.11.2005. Thereafter, the Government of India, Ministry of Environment and Forest, New Delhi vide its order dated 28.03.2006 determined the year of allotment and seniority of the respondent.

Further, the Accountant General (A&E), Assam issued necessary pay slip in favour of the deponent for drawing the salary and all the private respondents have drawn the salary as per the new pay slip in the IFS scale.

Copy of the order dated 28.03.2006 whereby determine the year of allotment in the IFS is annexed herewith and marked as ANNEXURE - A.

6. That with regard to the statement made in paragraphs 4.16 and 4.17 of the application, the humble deponent begs to state that the select list bears the names of officers against the size of vacancies and in the instant case the Selection Committee while preparing the select list for promotion to the post of IFS found the private respondents are suitable after weighting the overall assessment of the officers concerned. Whether there is a departmental proceeding is pending or not is in fact having no place in the process of selection. The applicant mere on anticipation filed the instant application by taking some irrelevant materials and base less allegation.
7. That with regard to the statement made in paragraph 4.18 of the application, the answering respondents begs to state that after the ACR is written, reviewed and finally accepted, there is no scope for review or recasting of the ACR of the officer.
8. That I beg to submit that the grounds set forth in the application are not the good grounds and the application is liable to be dismissed.
9. That I beg to submit that the instant application prepared and filed by the applicant is on mere anticipation and on irrelevant grounds having no legal force at all and is liable to be dismissed.

### VERIFICATION

I, Shri Khanindra Nath Barman, IFS, son of Shri Chulchoneswar Barman presently working as Deputy Conservator of Forest (Publicity), Office of the Chief Conservator of Forest (SF), Assam, Basistha, Guwahati - 23, do hereby verify that the paragraphs ....1..2..3..4..6..and..7..... made in the written statement are true to my knowledge; those made in paragraphs .....5..... are being matter of records of the case derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this 2nd of May 2006.

*Khanindra Nath Barman.*

SIGNATURE



No. 17013/2/2003-IFS-II

Government of India

## Ministry of Environment &amp; Forests

Paryavaran Bhawan, CGO Complex,  
Lodi Road, New Delhi - 110 003.

Dated the March 28, 2006

ORDER

The under-mentioned State Forest Service Officers of Assam Cadre were appointed to Indian Forest Service vide Notification of even number dated the 7<sup>th</sup> November, 2005. Their seniority and year of allotment are required to be determined in terms of the provisions of Rule 3(3)(ii) of the Indian Forest Service (Regulation of Seniority) Rules, 1997 which stipulates that "the year of allotment of a promotee officer shall be determined with reference to the year in which the meeting of the Committee to make selection, to prepare the select list on the basis of which he was appointed to the Service, was held and with regard to the continuous service rendered by him in the State Forest Service, up to 31<sup>st</sup> day of December of the year immediately before the year in which the meeting of the Committee to make selection was held".

2. As per the information furnished by the State Government of Assam, the details of service rendered in the grade of State Forest Service by these officers are given below :-

Name S/Shri	Year for which the Selection Committee Meeting was held	Completed years of service rendered in SFS as on 31.12.2001	Year of weightage admissible in terms of Seniority Regulations
Sanjib Kr. Bora	2002	20	6 Years
Kailash Khargharia	2002	19	6 Years
Md. Abdul Kuddus	2002	19	6 Years
Rup Nath Brahma	2002	19	6 Years

Name S/Shri	Year for which the Selection Committee Meeting was held	Completed years of service rendered in SFS as on 31.12.2002	Year of weightage admissible in terms of Seniority Regulations
Md. Debiruz Zaman	2003	20	6 Years

Name S/Shri	Year for which the Selection Committee Meeting was held	Completed years of service rendered in SFS as on 31.12.2003	Year of weightage admissible in terms of Seniority Regulations
Lamat Kalita	2004	21	7 Years
Khanindra Nath Barman	2004	21	7 Years

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10.4.06.certified to be  
true copy

Ld. Adv. 2/5/06.

Sent on p 2/-

1. In terms of Rules 3(3) (ii) and 4 of the Indian Forest Service (Regulation of Seniority) Rules, 1997, their seniority and year of allotment in the Indian Forest Service is as follows :-

S No	Name S/Shri	Year of allotment	Placement
1	2	4	5
1	Sanjib Kr. Bora	1996	Below Shri C Samayamoorthy (PR:1996)
2	Kailash Khargharia	1996	Below Shri Sanjib Kr. Bora, (SFS:1996)
3	Md. Abdul Kuddus	1996	Below Shri Kailash Khargharia, (SFS:1996)
4	Rup Nath Brahma	1996	Below Shri Md. Abdul Kuddus, (SFS:1996)
5	Md. Debiruz Zaman	1997	Below Shri Utpal Bora, (RR:1997)
6	Mamat Kalita	1997	Below Shri Md. Debiruz Zaman, (SFS:1997)
7	Khanindra Nath Barman	1997	Below Shri Mamat Kalita, (SFS:1997)

*(Signature)*

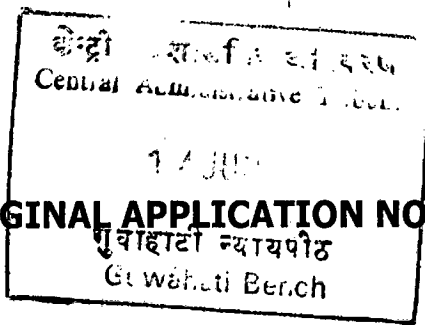
(Ashok Kumar)

Under Secretary to the Govt. Of India

Copy for distribution to:-

1. The Chief Secretary, Government of Assam, Dispur, Guwahati.
2. The Chief Secretary, Government of Meghalaya, Shillong.
3. The Secretary, Union Public Service Commission, New Delhi.
4. The Principal Chief Conservator of Forests, Assam, Dispur, Guwahati.
5. The Accountant General, Assam, Dispur, Guwahati.
6. Copy for Guard File/Civil List.

*Certified to be  
true copy  
Ld. Secy  
Adm.  
2/5/06.*



ORIGINAL APPLICATION NO. 315/2005

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL -

GUWAHATI BENCH

Mufakhkher Ali

- -

Applicant

Vs.

Union of India & Others


- -

Respondents

Reply on behalf of the Respondent No. 1

I, Ashok Kumar, aged 49 years S/o Late Shri L D Kalra, working as Under Secretary in the Ministry of Environment & Forests, Government of India, Paryavaran Bhawan, New Delhi do hereby solemnly affirm and say as under: -

2. That I am Under Secretary in the Ministry of Environment & Forests, Government of India, New Delhi and having been authorised, I am competent to file this reply on behalf of Respondent No. 1. I am acquainted with the facts and circumstances of the case on the basis of the records maintained in the Ministry of Environment & Forests. I have gone through the Application and understood and contents thereof. Save and except whatever is specifically admitted in this reply, rest of the averments will be deemed to have been denied and the Applicant should be put to strict proof of whatever he claims to the contrary.

  
(ASHOK KUMAR)  
Under Secretary, Govt of India  
Min. of Environment & Forests  
Paryavaran Bhawan, Lodhi Road  
C. G. O. Complex, New Delhi - 3

59  
Filed by  
The respondents  
through  
Gabinets  
11.6.06 Sr Gasc

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3.1 Sh Mufakhkher Ali, the applicant herein, is a State Forest Service officer of Assam, and has agitated about his non inclusion in the select lists prepared by the Selection Committee for the years 2002, 2003 and 2004. He has prayed for a direction to the respondents to convene review Selection Committee Meeting to prepare select lists for the years 2002, 2003 and 2004 so that his name is considered for promotion to the IFS cadre of Assam.

3.2 Indian Forest Service (I.F.S.) is one of the three All India Services constituted under the All India Services Act, 1951. The service is organised into cadres, one each for a State or a group of States.

3.3 Appointment of persons to this Service is made as per provisions made in the IFS (Recruitment) Rules, 1966, IFS (Appointment by Competitive Examination) Regulations, 1967 and IFS (Appointment by Promotion) Regulations, 1966 and other provisions as amended from time to time.

3.4 Promotion of State Forest Service Officers (SFS) to the Indian Forest Service (IFS) is made under IFS (Appointment by Promotion) Regulations, 1966 as amended from time to time (hereinafter referred to as Promotion Regulations).

3.5 Regulation 3 of the Promotion Regulations enjoins the constitution of the Committee to select the promotees under the chairmanship of the Chairman of the UPSC or its Member, who shall prepare, under Rule 5, a list of suitable officers. Regulation 6 mandates the State Government to forward the

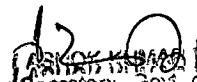
  
Under Secretary, Govt. of India  
Min. of Environment & Forests  
Paryaveeran Bhawan, Lodhi Road  
C. C. O. Complex, New Delhi - 3

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select list to the UPSC for approval. Under Regulation 7 the UPSC may approve the list finally with such modifications, if any, as may in the opinion of UPSC be just and proper. Under sub regulation 3 of Regulation 7 the list finally approved by the UPSC shall form the select list of the promotee officers. Thereafter, under Regulation 9, "Appointments of the members of the State Forest Service to the Service shall be made by the Central Government on the recommendations of the State Government in the order in which the names of members of the State Forest Service appear in the Select List for the time being in force."

- 3.6 In regard to the eligibility conditions for being considered by the Selection Committee are concerned the answering respondent submits that the third proviso to sub-regulation 2 of Regulation 5 of the Promotion Regulations mandates that the Committee shall not consider the case of a member of the State Forest Service unless on the first day of January of the year in which it meets, he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in post(s) included in the State Forest Service. Further, the sub-regulation 3 of Regulation 5 of the Promotion Regulations mandates that the Committee shall not consider the case of the members of the State Forest Service who have attained the age of 54 years on the first day of January of the year in which it meets. This means that the three requirements,

  
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Min. of Environment & Forests  
Paryavaran Bhawan, Lodhi Road  
C. C. D. Complex, New Delhi - 3

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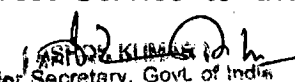
namely, substantive appointment in the State Forest Service, completion of not less than eight years of continuous service (whether officiating or substantive) in post(s) included in the State Forest Service and not having attained the age of 54 years on the first day of January of the year in which the Selection Committee meets, must be fulfilled before the name of an officer of State Forest Service can be considered by the Selection Committee for inclusion in the Select List. In other words, as per IFS((Appointment by Promotion) Regulations, 1966, all the following three conditions must be satisfied as on first day of January of the year in which the Selection Committee meets before the name of an officer of State Forest Service can be considered by the Selection Committee

(1) he is substantive in State Forest Service

(2) he has completed not less than eight years of continuous service (whether officiating or substantive) in post(s) included in the State Forest Service ;

(3) and he has not attained the age of 54 years

3.7 It is further submitted that the answering respondent has a limited role in the selection and the appointment to the IFS under the Promotion Regulations. It is only on the basis of the documents supplied by the State Government to the Union Public Service Commission that the list is prepared by the Selection Committee which is headed by the Chairman/member of the UPSC and appointments of the members of the State Forest Service to the IFS are to be

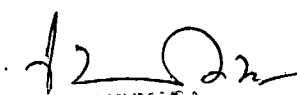
  
Under Secretary, Govt. of India  
Min. of Environment & Forests  
Banyan Road, Lodhi Road  
C. C. C. Complex, New Delhi - 3

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made by the Central Government on the recommendations of the State Government in the order in which the names of the members of the SFS Officers appear in the Select List. Having thus submitted the brief background of the case, the answering respondent submits his reply to the averments made in the Original Application in the succeeding paragraphs.

4. Reply to the Facts of the case:

- 4.1 In reply to para 4.1 the answering respondent has no comments.
- 4.2 In reply to para 4.2 the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.
- 4.3 In reply to para 4.3, the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.
- 4.4 In reply to para 4.4, the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.
- 4.5 In reply to para 4.5, the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.

  
J. K. KUMAR  
Under Secretary, Govt. of India  
Min. of Environment & Forests  
P.O. Box 100, New Delhi - 110 002

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- 4.6 In reply to para 4.6, the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.
- 4.7 In reply to para 4.7, the answering respondent has no comments as the averments made therein are matter of record.
- 4.8 In reply to para 4.8, the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.
- 4.9 In reply to para 4.9, the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.
- 4.10 In reply to para 4.10, the answering respondent has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.
- 4.11 In reply to para 4.11, the answering respondent submits that in terms of proviso to Regulation 5(4) of the IFS(Appointment by Promotion) Regulations, 1968, it has been provided that the name of an officer included in the list shall be treated as provisional if the State Government withholds the integrity certificate in respect of such an officer or any proceedings,

  
(ASHOK KUMAR)  
Under Secretary, Govt. of India  
Min. of Environment & Forests  
P. O. Box No. 120, New Delhi - 110 002

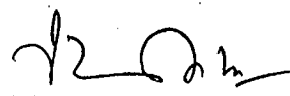


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departmental or criminal, are pending against him. 2<sup>nd</sup> Proviso to Regulation 7(4) provides that in the case of provisionally included officer, where the State Government has forwarded the proposal to declare a provisionally included officer in the select list as "unconditional" to the Commission **during the period when the select list was in force**, the Commission shall decide the matter within a period of ninety days or before the date of meeting of the next selection committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the select list as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9. 2<sup>nd</sup> Proviso to regulation 9 of the Promotion Regulations provides that the appointment of an officer, whose name has been included in the select list provisionally, shall be made only after the name is made unconditional by the Commission.

4.12 In reply to para 4.12, the answering respondent has no comments as the averments made therein relate to respondent no. 2 and respondent no. 3 whose reply statement may kindly be referred to.

4.13 In reply to para 4.13, the answering respondent has no comments as the averments made therein relate to

  
(Signature)  
Under Secretary, Govt. of India  
Min. of Environment & Forests  
P.O. Box 100, New Delhi - 110 001  
Tel. 2338 2111, New Delhi - 3

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respondent no. 2 whose reply statement may kindly be referred to.

4.14 In reply to para 4.14, the answering respondent has no comments as the averments made therein relate to respondent no. 2 and respondent no. 3 whose reply statement may kindly be referred to.

4.15 In reply to para 4.15, the answering respondent has no comments as the averments made therein are matter of record.

4.16 In reply to para 4.16, the answering respondent submits that in terms of the Promotion Regulations appointment to the IFS of the members of the State Forest Service are to be made by the Central Government on the recommendations of the State Government in the order in which the names of the members of the SFS Officers appear in the Select List. The name of the applicant was not included in the Select List and therefore he was not appointed to IFS by the answering respondent.

4.17 In reply to para 4.17 the answering respondent submits that in Syed Khalid Rizvi Vs. Union of India 1993 Supp (3) SCC 575, it was held in para 31 by the Hon'ble Supreme Court that no employee has a right to promotion; the only right is that he is entitled to be considered for promotion according to rules. The petitioner herein was duly considered for promotion to

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IFS under the rules but his name was not included in the Select List. There is no provision in the Promotion Regulations for review of a Select List which has been approved by the UPSC and acted upon by the Govt of India.

4.18 In reply to para 4.18 the answering respondent submits that he has no comments as the averments made therein relate to respondent no. 2 whose reply statement may kindly be referred to.

### **PRAYER**

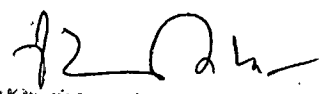
In view of the foregoing paragraphs, it is submitted that the present Application is devoid of any merit and deserves to be dismissed forth with and the Respondent prays accordingly.

  
(Ashok Kumar)  
Under Secretary, Govt. of India  
Min. of Environment & Forests  
Paryavaran Bhawan, Lodi Road  
New Delhi - 110 003

### **VERIFICATION**

I, Ashok Kumar, Under Secretary to the Government of India having my office at Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi - 110 003, do hereby verify that the contents stated above are true and correct to the best of my knowledge, belief and information and that nothing has been suppressed there from.

Verified at New Delhi on this the 18<sup>th</sup> day of May, 2006.

  
(Ashok Kumar)  
Under Secretary, Govt. of India  
Min. of Environment & Forests  
Paryavaran Bhawan, Lodi Road  
New Delhi - 110 003

ORIGINAL APPLICATION NO. 315/05

Contd...2/-

2. That the statement made in Paragraph 4.1 of the application the humble deponent has <sup>nothing</sup> ~~nothing~~ to make comment on it. He, however, does not admit any statements which are contrary to records.

3. That with regard to the statement made in paragraph of 4.2 of the application, the humble answering respondent has ~~nothing~~ to make comment on it as they are being matter of records of the case. He however does not admit any statement which are contrary to records.

4. That with regard to the statement made in paragraphs 4.3 to 4.6 the humble answering respondent begs to state ~~that~~ on the basis of charges for alleged involvement and financial irregularities the applicant was asked to show cause vide letter No.FRE.62/2001/406 dated 12-12-02 under the provision of Assam Services (Discipline and Appeal) Rules, 1964. He made his replies denying the charges levelled against him. Thereafter, an enquiry was made into the charges levelled against him and he submitted his findings vide letter dated 4-7-05. After careful examination of findings of the enquiry officer the Departmental proceeding of the applicant was dropped and he had been exonerated from all the charges. However he was warned to be careful in future in view of two charges levelled against the applicant.

5. That with regard to the statement made in paragraphs 4.7, 4.8 and 4.9 of the application the answering respondent has nothing to make comment on it. He, however, does not admit any, statements which are contrary to records.

6. That with regard to the statement made in paragraphs 4.10 to 4.14 of the application the humble answering respondent begs to state that Annual Confidential Report of the employee is written after assessing the performance, character and qualities for the respective year as per the provision laid down in the Assam Services (Confidential Rolls) Rules, 1990. The confidential Report are then <sup>reviewed</sup> ~~revised~~ by the reviewing authority and after reviewing the confidential Report completely it is finally accepted. After the ACR is written, ~~reviewed~~ and accepted absolutely there is no such provision in the said Rules for recasting of the accepted ACR.

Whether the officer is facing departmental proceeding or not is immaterial as it has no relevance while writing the ACR. The Departmental proceeding is in fact not reflected in the ACR. While writing during the pendency of the proceeding. Further the Departmental proceeding is not any way influence in writing the ACR.

Further it is stated that pending departmental proceeding is not a bar for selection in respect of the applicant for promotion to the cadre of IFS.

7. That with regard to the statement made in paragraph 4.15 of the application the humble answering respondent begs to state that the selection Committee after objective assessment alongwith merit and sustainability prepared the select list by selecting 7 officers to the cadre of IFS and accordingly ~~is~~ a notification dated 14-11-05 under no FRE<sup>109/</sup>94/Part-III/367 was issued by the Commissioner & Secretary to the Govt. of Assam, Environment~~al~~ and Forests Department by appointing of private respondent to the cadre of IFS.

8. That with regard to the statement made in paragraphs 4.16 and 4.17 of the application the humble answering respondent begs to state that it is not a fact that exclusion of the name of the applicant in the notification dated 14-11-05, issued by the Ministry of Environment & Forests, New Delhi which was republished vide notification dated 14-11-05, only because of the pendency of the departmental proceeding.

It respectfully begs to state that whether the departmental proceeding is pending or not is in fact having no place of process of selection. The instant writ petition is in fact filed on mere anticipation with some baseless allegation.

9. That with regard to the statement made in paragraph 4.18 of the application the humble answering respondent reiterate and reaffirms the statement made in paragraph 6 of this written statement.

10. That the ground set forth in the application are not the good ground and the application is liable to be dismiss.

11. That the application has no merit at all and is liable to be dismiss.


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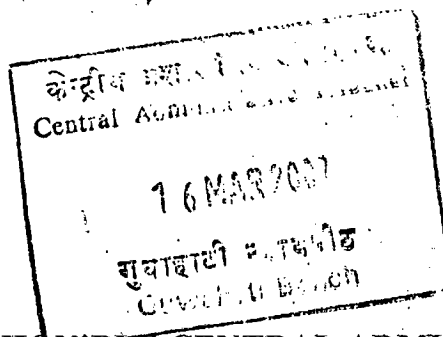
V E R I F I C A T I O N

I, Smti / Smt. Dinesh Ch. Nath daughter of Smt. Anil Nath  
. Ch. Nath presently working as Deputy Secretary to the Govt. of  
Assam, Environment & Forests Deptt., Dispur, Guwahati-6 do  
hereby verify that the statement made in paragraphs \_\_\_\_\_  
are true to my knowledge ; those made in paragraphs \_\_\_\_\_  
are being matters of records of the case derived therefrom  
which I believe to be true and the rest are my humble  
submission before this Hon'ble Tribunal.

I have not suppress any material facts.

And I sign this verification on this the 29<sup>th</sup> May, 06.

  
Signature 29/5/06



BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE,  
GUWAHATI BENCH : AT GAUHAATI

ORIGINAL APPLICATION No. 315/2005

Mufakhhkher Ali

.....Applicant

-Vs-

Union of India & others

.....Respondents

IN THE MATTER OF

A Rejoinder by and on behalf of the applicant to  
the written statement filed by the Respondents  
No. 1 in the above noted Original Application.

I Shri Mufakhhkher Ali, aged about 47 years, S/O Late Mahboob Ali,  
resident of 7<sup>th</sup> mile Jalukbari Guwahati – 14, do hereby solemnly affirm and state  
as follows.

1. That I am the applicant in the above noted original application and  
as such conversant with the fact and circumstances of the case. I have perused the  
written statement filed on behalf of the respondents No. 1 and have clearly  
understood the contents thereof.

2. That save and except the statements that are specifically admitted to  
herein below, all the averments made in the written statement under reply, be

Filed by:- the applicant 72  
through → Dr. Jyeshtha Sharma.  
Advocate.



deemed to have been denied by the applicant. The applicant further does not admit anything that is not borne out of records of the matter of the case.

### PRELIMINARY SUBMISSIONS

3. That your applicant states that the pendency of the departmental proceeding initiated against the applicant was also taken into consideration while writing of his ACR's for the relevant period of time and the pendency of the said proceedings and the nature of the allegations levelled against the applicant lead to an improper assessment of the quality of works being discharged by him and his actual merit came to be suppressed in the ACR's. The ACR's of the applicant for the period 1998 - 2003 came to be written with the pendency of the said proceedings as its back drop and the actual performance of the applicant during the said period was not reflected in its true and proper perspective.

4. That your humble applicant states that the nature of allegations and charges framed against him vide communication dated 18.11.2000. has the effect of projecting him as an officer not even fit for retention in service. The said charges were framed against him on a mistaken view of the matter and the same were without any basis. However, the same having been placed before the Selection Committee, it has the effect of clouding the merit of the applicant and the same along with the ACR's for the periods 1998 - 2003 written with the said proceedings as its backdrop had the effect of denying to the applicant a proper assessment of his merit.

5. That your humble applicant states that the Selection Committee meeting having been held before issuance of the order dated 7.10.05 (Annexure 3 to the OA), the fact of Departmental Proceedings initiated against the applicant having been dropped and he having been exonerated of the charges levelled against him could not be brought to the notice of the Selection Committee. Accordingly, there was improper consideration of the case of applicant and his merit was assessed with the cloud hanging over it in view of the charges levelled against him. Further the ACR's for the period when the said proceedings were pending having been written with the said proceedings as its proceedings as its

back drop, the same did not convey the true and proper assessment of the works discharged by the applicant at the relevant point of time. The manner in which the said ACR's were recorded and the position as existing naturally deprived the applicant a proper consideration of his case.

6. That the name of the applicant came to be excluded from the select lists in question, only because of the fact that the pendency of the departmental proceedings initiated against him prevented a proper consideration of the case of the applicant in the selection. However, the dropping of the said proceedings and exoneration of the petitioner of the charges framed against him, required a re-assessment of the ACR's of the petitioner and also convening of a Review of Departmental Promotion Committee for a fresh consideration of the case of the applicant and others. The refusal on the part of the authorities in initiating proper measures in the matter for redressing the grievances of the applicant is to some how protect the promotion of the private respondents to the cadre of IFS.

#### **PARAWISE REPLY**

7. That with regard to the statements made in paragraphs 3.1 to 3.6, your deponent states that these are matters relating to the Rules and procedures in force pertaining to selection for appointment by Promotion to the cadre of IFS, and as such the applicant beg not to offer any comment. It is stated that the applicant fulfilled all the eligibility criteria for being considered for promotion to the cadre of IFS.

8. That with regard to the statements made in paragraph 4.1 to 4.10 and 4.12 to 4.18 of the written statement, under reply, your deponent states that there being no denial by the respondents of the contentions made by the applicant in the corresponding paragraphs of the Original Application, the contentions as made by the applicant is required to be treated as admitted.

9. That with regard to the statements made in paragraph 4.11, your deponent states that there having been no proper consideration of the case of the

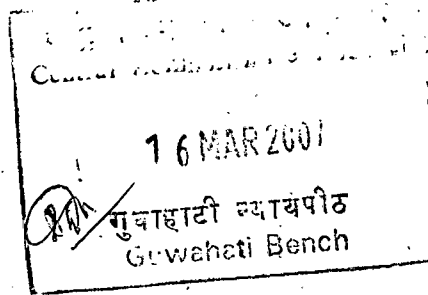
applicant and the charges levelled against him in the Departmental Proceedings having biased the Selection Committee, the applicant came to be excluded from the select lists in question. The Departmental Proceedings having been dropped and the applicant been exonerated from the charges levelled against him it was a fit case where in the Respondents suo-motto ought to have convened a Review Departmental Promotion Committee for a fresh consideration in the matter. It is also mentioned that with the exoneration of the applicant from the charges levelled against him, the charges framed against the applicant has been rendered void ab-initio. The Respondents No.1 have failed to bring on record any material to counter the contentions raised by the applicant in the Original Application.

10. That you're applicant states that he has been able to make out a prima facie case, requiring the interference in the matter by this Hon'ble Tribunal. The original application is required to be allowed with costs.

11. That the statements made in paragraphs 1, 2, 3 (party), 4 (party), 6, 8, 9 (party), \_\_\_\_\_ of this affidavit-in-opposition, are true to the best of my knowledge, those made in paragraph 3 (party), 4 (party), 5, 7, 9 (party) being matters of record are true to my information as derived there from, which I clearly believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 22<sup>nd</sup> day of DECEMBER, 2006 at Guwahati.

• *Mujahid Ali*



BEFORE THE HON'BLE CENTRAL ADMINI  
GUWAHATI BENCH : AT GAUHATI

ORIGINAL APPLICATION No. 315/2005

Mufakhkher Ali

.....Applicant

-Vs-

Union of India & others

.....Respondents

IN THE MATTER OF

A Rejoinder by and on behalf of the Applicant  
to the Written Statement filed by the  
Respondents No. 3 & 4 in the above noted  
Original Application.

I Shri Mufakhkher Ali, aged about 47 years S/O Late Mahboob Ali,  
resident of 7<sup>th</sup> mile Jalukbari Guwahati - 14, do hereby solemnly affirm and state  
as follows.

1. That I am the applicant in the above noted original application and  
as such conversant with the fact and circumstances of the case. I have perused the  
written statement filed on behalf of the respondents No. 3 & 4 and have clearly  
understood the contents thereof.

Filed by:- The applicant X6  
through → Sanjesh Sharma.  
Advocate.

2. That save and except the statements that are specifically admitted to herein below, all the averments made in the written statement under reply, be deemed to have been denied by the applicant. The applicant further does not admit anything that is not boned out of records of the matter of the case.

### PRELIMINARY SUBMISSIONS

3. That your applicant states that the pendency of the departmental proceeding initiated against the applicant was also taken into consideration while writing of his ACR's for the relevant period of time and the pendency of the said proceedings and the nature of the allegations levelled against the applicant lead to an improper assessment of the quality of works being discharged by him and his actual merit came to be suppressed in the ACR's. The ACR's of the applicant for the period 1998 - 2003 came to be written with the pendency of the said proceedings as its back drop and the actual performance of the applicant during the said period was not reflected in its true and proper perspective.

4. That your humble applicant states that the nature of allegations and charges framed against him vide communication dated 18.11.2000. has the effect of projecting him as an officer not even fit for retention in service. The said charges were framed against him on a mistaken view of the matter and the same were without any basis. However, the same having been placed before the Selection Committee, it has the effect of clouding the merit of the applicant and the same along with the ACR's for the periods 1998 - 2003 written with the said proceedings as its backdrop had the effect of denying to the applicant a proper assessment of his merit.

5. That your humble applicant states that the Selection Committee meeting having been held before issuance of the order dated 7.10.05 (Annexure 3 to the OA), the fact of Departmental Proceedings initiated against the applicant having been dropped and he having been exonerated of the charges levelled

against him could not be brought to the notice of the Selection Committee. Accordingly, there was improper consideration of the case of applicant and his merit was assessed with the cloud hanging over it in view of the charges levelled against him. Further the ACR's for the period when the said proceedings were pending having been written with the said proceedings as its proceedings as its back drop, the same did not convey the true and proper assessment of the works discharged by the applicant at the relevant point of time. The manner in which the said ACR's were recorded and the position as existing naturally deprived the applicant a proper consideration of his case.

6. That the name of the applicant came to be excluded from the select lists in question, only because of the fact that the pendency of the departmental proceedings initiated against him prevented a proper consideration of the case of the applicant in the selection. However, the dropping of the said proceedings and exoneration of the petitioner of the charges framed against him, required a re-assessment of the ACR's of the petitioner and also convening of a Review of Departmental Promotion Committee for a fresh consideration of the case of the applicant and others. The refusal on the part of the authorities in initiating proper measures in the matter for redressing the grievances of the applicant is to some how protect the promotion of the private respondents to the cadre of IFS.

#### **PARAWISE REPLY**

7. That with regard to the statements made in paragraph 4.1, 4.2, 5.1, 5.2 and 5.3 your deponent respectfully state that the same pertains to the establishment of and the functions discharged by UPSC, and the procedure followed for selecting candidates for promotion to the cadre of IFS and as such the applicant does not admit anything that is inconsistent and/or contrary to the records.

8. That with regard to the statements made in paragraph 5.4, your deponent states that it is an admitted position that the Selection Committee constituted by UPSC prepares the select list in question by deliberating on the quality of the officer as indicated in the various columns recorded by the reporting/reviewing officer/accepting authority in the ACR's for different years and then, after detailed deliberations and discussions, finally arrives at a classification to be assigned to each eligible officer in accordance with the provisions of the Promotion Regulations. It being the specific case of the applicant that in view of the departmental proceedings initiated against him, the ACR's for the relevant period during the pendency of the said proceedings did not reflect the actual quality of the work discharged by him and in view of the allegation levelled improper assessment of his merit came to be made and his actual merit came to be suppressed in the said ACR's. The ACR's written with the pendency of the said proceeding are the ACR's for the period 1998-2003.

As such there was no proper and sufficient material produced before the Selection Committee, which resulted in improper consideration of the case of the applicant.

9. That with regard to the statement made in paragraph 5.6, 5.7, 5.8, 5.9, 5.10, 5.11; 5.12, 5.13 and 5.14, your deponent states that the same matters of record and denies anything in consistent and/or contrary to the records of the case.

10. That with regard to the statements made in paragraph 6 of the written statement, under reply, your deponent states that the improper assessment of the works done by the applicant for the relevant years due to the pendency of the departmental proceedings, lead to assignment of lower grading to him by the Selection Committee. The reckoning by the Selection Committee of the pendency of the departmental proceedings against the applicant, lead to an improper consideration in his case resulting in his denial of promotion to the cadre of IFS.

11. That with regard to the statements made in paragraph 8.1, 8.2 and 8.3 of the written statement, under reply, your deponent states that it is his case

that the materials basing on which the selection in question was held, did not reveal the actual merit of the applicant. Inasmuch as the ACR's written during the period the Departmental Proceedings was pending, came to be clouded by; the allegations levelled against the applicant. Further, the consideration by the Selection Committee of the Departmental Proceedings pending against him also prevented a proper assessment of his merit. It was because of such improper consideration that the applicant came to be graded as "Good".

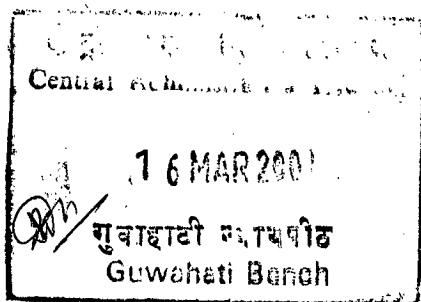
12. That you're applicant states that he has been able to make out a prima facie case, requiring the interference in the matter by this Hon'ble Tribunal. The original application is required to be allowed with costs.

13. That the statements made in paragraphs 1, 2, 3 (partly), 4 (partly), 6, 8 (partly), 10, 11 of this affidavit-in-opposition, are true to the best of my knowledge, those made in paragraph 3 (partly), 4 (partly), 5, 7, 8 (partly), 9 being matters of record are true to my information as derived there from, which I clearly believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 22<sup>nd</sup> day of DECEMBER, 2006 at Guwahati.

• Mufabbbher Ali





**BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE  
GUWAHATI BENCH : AT GAUOHATI**

**ORIGINAL APPLICATION No. 315/2005**

Filed by:- the applicant  
through → Dr. Jyeshtha Sharma  
Advocate.

Mufakhkher Ali

.....Applicant

-Vs-

Union of India & others

.....Respondents

**IN THE MATTER OF**

A Rejoinder by and on behalf of the Applicant  
to the Written Statement filed by the  
Respondents No. 2, 5 and 6 in the above noted  
Original Application.

I Shri Mufakhkher Ali, aged about 47 years, S/O Late Mahboob Ali,  
resident of 7<sup>th</sup> mile Jalukbari Guwahati – 14, do hereby solemnly affirm and state  
as follows.

1. That I am the applicant in the above noted original application and  
as such conversant with the fact and circumstances of the case. I have perused the  
written statement filed on behalf of the respondents No. 2, 5 and 6 and have fully  
understood the contents thereof.

2. That save and except the statements that are specifically admitted to herein below, all the averments made in the written statement under reply, be deemed to have been denied by the applicant. The applicant further does not admit anything that is not borne out of records of the matter of the case.

### PRELIMINARY SUBMISSIONS

3. That your applicant states that the pendency of the departmental proceeding initiated against the applicant was also taken into consideration while writing of his ACR's for the relevant period of time and the pendency of the said proceedings and the nature of the allegations levelled against the applicant lead to an improper assessment of the quality of works being discharged by him and his actual merit came to be suppressed in the ACR's. The ACR's of the applicant for the period 1998-2003 came to be written with the pendency of 8 the said proceedings as its back drop and the actual performance of the applicant during the said period was not reflected in its true and proper perspective.

4. That your humble applicant states that the nature of allegations and charges framed against him vide communication dated 18.11.2000. has the effect of projecting him as an officer not even fit for retention in service. The said charges were framed against him on a mistaken view of the matter and the same were without any basis. However, the same having been placed before the Selection Committee, it has the effect of clouding the merit of the applicant and the same along with the ACR's for the periods 1998-2003, written 8 with the said proceedings as its backdrop had the effect of denying to the applicant a proper assessment of his merit.

5. That your humble applicant states that the Selection Committee meeting having been held before issuance of the order dated 7.10.05 (Annexure 3

to the OA), the fact of Departmental Proceedings initiated against the applicant having been dropped and he having been exonerated of the charges levelled against him could not be brought to the notice of the Selection Committee. Accordingly, there was improper consideration of the case of applicant and his merit was assessed with the cloud hanging over it in view of the charges levelled against him. Further the ACR's for the period when the said proceedings were pending having been written with the said proceedings as its proceedings as its back drop, the same did not convey the true and proper assessment of the works discharged by the applicant at the relevant point of time. The manner in which the said ACR's were recorded and the position as existing naturally deprived the applicant a proper consideration of his case.

6. That the name of the applicant came to be excluded from the select lists in question, only because of the fact that the pendency of the departmental proceedings initiated against him prevented a proper consideration of the case of the applicant in the selection. However, the dropping of the said proceedings and exoneration of the petitioner of the charges framed against him, required a re-assessment of the ACR's of the petitioner and also convening of a Review of Departmental Promotion Committee for a fresh consideration of the case of the applicant and others. The refusal on the part of the authorities in initiating proper measures in the matter for redressing the grievances of the applicant is to some how protect the promotion of the private respondents to the cadre of IFS.

#### **PARA WISE REPLY**

7. That with regard to the statements made in paragraph 4 of the written statement under reply, your deponent states that his contention that he was exonerated of the charges framed against him in the Departmental Proceedings has been admitted by the Respondents No. 2, 5 and 6. However, the unnecessary prolonging of the enquiry without any justification has adversely effected the service career of the applicant. Had the proceedings been expeditiously completed,

there would have not existed any reason denying to the applicant his due promotion to the IFS cadre along with the private respondents.

8. That with regard to the statements made in paragraph 5 of the written statement under reply, the applicant reiterates and reaffirms the statements made in paragraph 4.7, 4.8 and 4.9 of the Original application.

9. That your applicant denies the statements made in paragraph 6 of the written statement, under reply, your deponent reiterates and reaffirms the statements made in paragraph 4.10 to 4.14 of the OA and states that the ACR's for the period in question, was written with the charges levelled against the applicant as its back drop. The pendency of the Departmental Proceedings and the nature of charges levelled against him therein, the actual merit of the applicant came to be suppressed resulting in improper or no consideration in his case by the Selection Committee for promotion to the cadre of IFS. Therefore, with the dropping of the departmental proceedings, the ACR's in question of the applicant is required to be recast and his case is required to be considered afresh by convening a Review Departmental Promotion Committee.

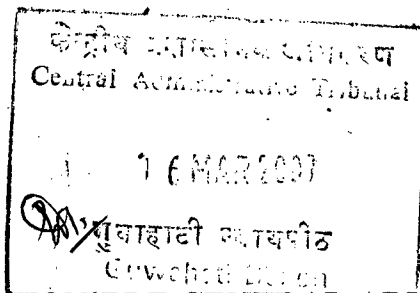
10. That with regard to the statements made in paragraph 7 and 8 of the Written Statement, under reply, your deponent denies the same and states that, had there been a proper consideration of his case, there existed no reason for non-inclusion of the name of the applicant in the select lists in question. It is denied that the departmental proceedings pending against the applicant was not considered by the Selection Committee. The Reckoning by the Selection Committee of the charges framed against the applicant and the improper recording of his merit in the ACR's in question, deprived the applicant of his due promotion to the cadre of IFS.

11. That with regard to the statements made in paragraph 9, 10 and 11 your deponent denies the same and states that the contentions as made by the applicant in the above noted Original Application stands un-refuted. The applicant has been able to make out a prima-facie case requiring the interference in the matter by this Hon'ble Court and the OA is liable to be allowed granting to the applicant the reliefs prayed for therein by him.

12. That the statements made in paragraphs 1, 2, 3 (partly), 4 (partly), 6, 7, 8, 9, 10 of this Rejoinder, are true to the best of my knowledge; those made in paragraph 3 (partly), 4 (partly), 5, being matters of record are true to my information as derived there from, which I clearly verily to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 22<sup>nd</sup> day of DECEMBER, 2006 at Guwahati.

• Muzabibher Ali



**BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE  
GUWAHATI BENCH : AT GAUHATI**

**ORIGINAL APPLICATION No. 315/2005**

Mufakhkher Ali

.....Applicant

-Vs-

Union of India & others

.....Respondents

**IN THE MATTER OF**

A Rejoinder by and on behalf of the Applicant  
to the Written Statement filed by the  
Respondents No. 7 to 13 in the above noted  
Original Application.

I Shri Mufakhkher Ali, aged about 47 years S/O Late Mahboob Ali,  
resident of 7<sup>th</sup> mile Jalukbari Guwahati – 14, do hereby solemnly affirm and state  
as follows.

1. That I am the applicant in the above noted original application and  
as such conversant with the facts and circumstances of the case. I have perused the  
written statement filed on behalf of the respondents No. 3 & 4 and have clearly  
understood the contents thereof.

Filed by :- the applicant  
through → Brinjesh Sharma. s  
Associate

2. That save and except the statements that are specifically admitted to herein below, all the averments made in the written statement, under reply, be deemed to have been denied by the applicant. The applicant further does not admit anything that is not borne out of records of the matter of the case.

### PRELIMINARY SUBMISSIONS

3. That your applicant states that the pendency of the departmental proceeding initiated against the applicant was also taken into consideration while writing of his ACR's for the relevant period of time and the pendency of the said proceedings and the nature of the allegations levelled against the applicant lead to an improper assessment of the quality of works being discharged by him and his actual merit came to be suppressed in the ACR's. The ACR's of the applicant for the period 1998 - 2003 came to be written with the pendency of the said proceedings as its back drop and the actual performance of the applicant during the said period was not reflected in its true and proper perspective.

4. That your humble applicant states that the nature of allegations and charges framed against him vide communication dated 18.11.2000. has the effect of projecting him as an officer not even fit for retention in service. The said charges were framed against him on a mistaken view of the matter and the same were without any basis. However, the same having been placed before the Selection Committee, it has the effect of clouding the merit of the applicant and the same along with the ACR's for the periods 1998 - 2003, written with the said proceedings as its backdrop had the effect of denying to the applicant a proper assessment of his merit.

5. That your humble applicant states that the Selection Committee meeting having been held before issuance of the order dated 7.10.05 (Annexure 3 to the OA), the fact of Departmental Proceedings initiated against the applicant

having been dropped and he having been exonerated of the charges levelled against him could not be brought to the notice of the Selection Committee. Accordingly, there was improper consideration of the case of applicant and his merit was assessed with the cloud hanging over it in view of the charges levelled against him. Further the ACR's for the period when the said proceedings were pending having been written with the said proceedings as its proceedings as its back drop, the same did not convey the true and proper assessment of the works discharged by the applicant at the relevant point of time. The manner in which the said ACR's were recorded and the position as existing naturally deprived the applicant a proper consideration of his case.

6. That the name of the applicant came to be excluded from the select lists in question, only because of the fact that the pendency of the departmental proceedings initiated against him prevented a proper consideration of the case of the applicant in the selection. However, the dropping of the said proceedings and exoneration of the petitioner of the charges framed against him, required a re-assessment of the ACR's of the petitioner and also convening of a Review of Departmental Promotion Committee for a fresh consideration of the case of the applicant and others. The refusal on the part of the authorities in initiating proper measures in the matter for redressing the grievances of the applicant is to some how protect the promotion of the private respondents to the cadre of IFS.

#### **PARAWISE REPLY**

7. That with regard to the statements made in paragraphs 2, 3 and 4, your deponent does not admit anything contrary to and/or inconsistent with the records of the case.

8. That with regard to the statements made in paragraph 5 of the written statement, under reply, your applicant denies the same and states that the ACR's for the period when the departmental proceedings were pending, having



been written with the allegations levelled against the applicant as its back drop, there was no material available to disclose the actual performance of the applicant during the said period. Further the pendency of the departmental proceedings and the allegations levelled therein against the applicant having been reckoned by the Selection Committee, he was denied a proper consideration in the Selection, resulting in his deprivation of his due promotion to the cadre of IFS.

The departmental proceedings initiated against the applicant having been dropped, exonerating the applicant of the charges levelled against him, the applicant is entitled for a fresh consideration of his case by convening a Review Departmental Proceeding. The ACR's of the applicant for the period, when the Departmental proceedings were pending against him are also required to be re-casted before placing the same before the Review Departmental Promotion Committee.

It is stated that the select list containing the names of the private Respondents being under challenge in the instant proceedings, the appointment and drawl by them of their pay and allowances in the cadre of IFS is inconsequential.

9. That with regard to the statements made in paragraph 6 of the written statements, under reply, your deponent denies the same and states that the departmental proceeding pending against the applicant and the charges framed against him therein were taken note of and considered by the Selection Committee while considering the case of the applicant for inclusion of his name in the select lists in question. It is denied that the original application was file on anticipation. The factors as highlighted by the applicant in the O.A towards challenging the select list s in question vitiates the whole selection and according the select lists are liable to be interfered with.

10. That with regard to the statements made in paragraph 7 of the written statement, under reply, your deponent denies the same and states that had

the actual merit of the applicant been reflected in the ACR's in question and had his merit not been suppressed in his ACR's by reckoning the Departmental proceedings pending against him, there existed no earthly reason existing for exclusion of the name of the applicant from the select lists in question.

11. That with regard to the statements made in paragraph 7, 8 and 9 your deponent denies the same and states that the Respondents No. 7 to 13 have failed to bring on record any material to counter the contentions raised by the applicant in the Original Application

12. That your applicant states that he has been able to make out a prima facie case, requiring the interference in the matter by this Hon'ble Tribunal. The original application is required to be allowed with costs.

13. That the statements made in paragraphs 1, 2, 3 (partly), 4 (partly) 6, 7, 8, 9 (partly), 10, 11 of this affidavit-in-opposition, are true to the best of my knowledge, those made in paragraph 3 (partly), 4 (partly), 5, 9 (partly) being matters of record are true to my information as derived there from, which I clearly believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 22<sup>nd</sup> day of DECEMBER, 2006 at Guwahati.

• Mufabulohar Ali